DECISIONS

OF THE

RAILROAD COMMISSION

OF THE

STATE OF CALIFORNIA

VOLUME VII

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

DECISION No. 2437.

IN THE MATTER OF THE APPLICATION OF WESTGATE PARK COMPANY AND BALBOA TERRACE COMPANY FOR AN ORDER APPROVING THE GRANT OF AN EASEMENT FOR A PUBLIC HIGHWAY TO APPLICANTS BY SAN FRANCISCO ELECTRIC RAILWAYS.

Application No. 1622.

Decided June 2, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicants in the above entitled matter having, on May 28, 1915, made written request to this Commission that the above entitled application be dismissed,

It is hereby ordered that the above entitled application be and the same is hereby dismissed.

Dated at San Francisco, California, this 2d day of June, 1915.

DECISION No. 2438.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING IT TO ISSUE TO THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS ITS BONDS BEARING INTEREST AT THE RATE OF SIX PER CENT PER ANNUM.

Application No. 1525.

Decided June 2, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

SECOND SUPPLEMENTAL ORDER.

Whereas this Commission, in Decision No. 2182, dated February 27, 1915, authorized Santa Barbara Gas and Electric Company to issue and sell $100,000.00 face value, first mortgage, 6 per cent thirty-year gold bonds; and,

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Whereas said decision provided that bonds to the face value of $62,000.00 should be issued and sold only after applicant had filed with this Commission a detailed statement showing the cost of additions and betterments, and had received from this Commission a supplemental order specifically authorizing the use of the proceeds to be obtained from the sale of said bonds; and,

Whereas Santa Barbara Gas and Electric Company has now filed a supplemental application for an order authorizing the applicant to issue and sell $11,000.00 of its first mortgage 6 per cent thirty-year gold bonds, to defray the cost of additions and betterments as shown in Exhibit "A," attached to said supplemental application;

And it appearing that the purposes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Barbara Gas and Electric Company be, and it is hereby, given authority to issue $11,000.00 face value of its first mortgage 6 per cent thirty-year gold bonds under its trust indenture to Los Angeles Trust and Savings Bank, dated July 1, 1911.

It is hereby further ordered that the provisions of this Commission's order in Decision No. 2182, dated February 27, 1915, shall remain in full force and effect in so far as not in conflict with the order herein.

The foregoing second supplemental order is hereby approved and ordered filed as the second supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of June, 1915.

Decision No. 2439, grade crossing; not printed. See end of volume.

DECISION NO. 2440.

CASCADE LAND COMPANY

vs.

MARIN WATER AND POWER COMPANY.

Case No. 761.

Decided June 2, 1915.

Complainant, having subdivided a certain tract into building lots and piped same for water service at its own expense, petitions the Commission to compel defendant water company to serve such tract with water, contending that it is within the district which the water company holds itself out as serving.

Held. As complainant agrees to stand all expense of connecting main, and it appearing that defendant has plenty of water to supply the district in question, defendant

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directed to construct the necessary connecting pipe at complainant's cost and serve such territory within thirty days.

E. H. Cosgriff, for Complainant.

Joseph Haber, Jr., for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an action to compel defendant water utility to supply water to complainant.

The complaint alleges in part that complainant owns about 800 acres of land situated on the Fairfax-Bolinas road, about 2,000 feet southerly from the railroad station at Fairfax, in Marin County; that complainant has subdivided a portion of this land into lots, many of which have been sold to people who desire to build houses thereon; that complainant has laid in the streets of said subdivision water mains and laterals which comply with the specifications and requirements of the water company; that all of complainant's land lies within the district supplied with water by the water company; that complainant has done all things on its part necessary to be done in order to receive a water supply from the water company; and that complainant has made application to the water company for water, but has been refused water. The complainant accordingly asks this Commission to make an order directing the water company to supply complainant enough water for ordinary domestic use upon said land.

A public hearing was held in San Francisco on May 20, 1915. At this hearing complainant showed that two houses have been built upon its land and that several more will soon be constructed if water is secured for the tract.

Defendant's counsel stated that defendant has two objections to the grant of the relief asked by complainant.

1. The first objection is that if defendant itself makes the extension necessary to serve this tract, it can not be reimbursed for the moneys so expended, in case Marin Municipal Water District is successful in acquiring defendant's property under proceedings already initiated looking to the acquisition of this property in eminent domain proceedings.

Complainant thereupon offered to bear the entire expense of constructing the necessary extension, which offer, as conceded by defendant, removed defendant's first objection. In view of this offer and defendant's position thereon, it becomes unnecessary for this Commission to discuss in this proceeding the issue thus raised by defendant.

2. The second objection, and the one relied on by defendant, is that defendant has not at its disposal sufficient water to enable it safely to supply complainant.

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By stipulation between the parties, such portions of the testimony in Application No. 1141, being the application of Marin Municipal Water District for an order establishing the just and reasonable compensation to be paid by Marin Municipal Water District for the property of Marin Water and Power Company, as might be deemed material, were considered in evidence in the present proceeding.

In the hearing on Application No. 1141, Mr. C. J. Rhodin, a witness for the water company, testified (Trans., p. 959) that the total capacity of the present developed and used sources of water of Marin Water and Power Company, excluding the supply from Swede George, is 2,000,000 gallons daily, and 2,126,000 gallons daily if Swede George is included. He added that he considered these amounts to be "the proven capacity of these reservoirs."

Mr. A. M. Hunt, a witness for the water company, reported in water company's Exhibit "V" as follows:

> "After a careful study and analysis of the records of the company, I state that the present plant of the company can supply an average of 2,000,000 gallons of water per day during every year in which the annual rainfall and distribution of the same during the year are not more adverse to water yield than any of the years from 1880 to date."

Mr. Hunt reported that the amount of water supplied by Marin Water and Power Company from its various sources from 1908 to 1913, inclusive, has been as follows:

Calendar year	Average per day, gallons
1908	1,635,377
1909	1,825,000
1910	2,126,611
1911	1,774,836
1912	1,563,730
1913	1,673,800

As the seasons of lowest rainfall at Lagunitas since 1880 were those of 1911–12 and 1912–13, the water which could have been supplied in either the year 1912 or 1913 was assumed by Mr. Hunt to be the measure of the amount which the company can supply in the most adverse season of record.

In Application No. 1508, the company's witness testified that the average supply of water per day in 1914 had been 1,507,000 gallons.

The falling off of use in 1911 and 1912 is undoubtedly due to the fact that in 1911 the company started systematically metering its system. Much waste of water has been stopped by the meters installed to date.

It is thus evident that there is still a substantial margin between the average capacity of the system and the present demands on it. At the present time, only 50 per cent of the system is metered. A considerable

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amount of additional water could no doubt be conserved by extending the metering of the system.

In view of the facts herein set forth I am not impressed with the defendant's claim that its water supply is so limited that it can not safely extend its service to the lands of the complainant herein.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision,

It is hereby ordered that Marin Water and Power Company, within thirty days from the date of this order, construct such pipe line as may be necessary, at complainant's cost, to serve the land of complainant described in the opinion which precedes this order, and that Marin Water and Power Company thereafter supply to said land at its usual rates a sufficient amount of water for ordinary domestic use, as required.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of June, 1915.

DECISION No. 2441.

IN THE MATTER OF THE APPLICATION OF C. H. L. GHRIEST, JR., ENGAGED IN BUSINESS AS AN ELECTRICAL UTILITY AT BANNING, CALIFORNIA, UNDER THE FICTITIOUS NAME OF THE LIGHT AND POWER UTILITY, FOR AN ORDER AUTHORIZING THE EXECUTION OF A MORTGAGE.

Application No. 1690.

Decided June 4, 1915.

Applicant, owing several small amounts which it is obliged to meet, applies for permission to mortgage its property to secure a one-year note in the sum of $600.00. Application granted provided the recipient of such note will agree in writing to extend same one year, provided such action is necessary.

Isaac B. Potter, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application for authority to execute a mortgage of utility property to secure the payment of a promissory note for $600.00.

Applicant is engaged in the business of selling electric energy for light and power purposes in Banning, California, under a franchise granted by the city of Banning by Ordinance No. 56, adopted on

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August 21, 1914, and a certificate of public convenience and necessity granted by the Railroad Commission on January 15, 1915, in Application No. 1448.

Applicant is the only utility selling electric energy in Banning. His service began in December, 1914, since which time applicant has gradually extended his business in Banning. Applicant buys his electric energy at wholesale from The Southern Sierras Power Company and sells it at retail.

Applicant has invested an amount claimed to be $6,000.00 in construction work in Banning and in material on hand. Applicant has exhausted his resources and now desires to borrow money for the following purposes:

1. To pay The Southern Sierras Power Company for electric energy supplied during March and April, 1915	$167 45
2. To pay sundry indebtedness for current expenses	232 55
3. To pay freight on poles from Newport Beach	100 00
4. To pay for copper wire to be purchased from the city of Los Angeles	130 00

Applicant desires now to borrow $600.00 from The Sierras Construction Company, a construction company controlled by the same interests which control The Southern Sierras Power Company, for one year at 7 per cent interest, and to mortgage his utility property to secure the payment of the note, according to a form of mortgage attached as Exhibit B to the petition herein. The Sierras Construction Company is willing to extend the note for a second year in case Mr. Ghriest is unable to pay the note by the end of the first year.

As the promissory note is to run for a term not to exceed twelve months and is not a renewal note, this Commission's consent is not necessary for the execution of the note. The mortgage, however, must be authorized by this Commission.

Applicant's counsel stated that applicant's revenues will hardly pay operating expenses at present, but that applicant hopes shortly, with extended business, to make a profit.

While I have some hesitation in recommending that applicant be authorized to mortgage his entire property to secure payment of a note for only $600.00, it seems difficult to segregate the property or to secure responsible endorsers of the note, and there seems to be no way to avoid this procedure at this time. However, the assurance of counsel for The Sierras Construction Company that the loan may run for two years, if necessary, will give applicant two years in which to get on his feet.

I recommend that the application be granted, subject to the conditions contained in the following order:

ORDER.

C. H. L. Ghriest, Jr., engaged in business as an electrical utility at Banning, under the name of The Light and Power Utility, having asked for an order authorizing him to execute a mortgage to The Sierras

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Construction Company of his entire utility property at Banning, California, in substantially the form of mortgage attached to the petition herein and marked Exhibit B, to secure the payment of a promissory note for $600.00, payable to The Sierras Construction Company and bearing interest at 7 per cent per annum, and a public hearing having been held on said application,

It is hereby ordered that C. H. L. Ghriest, Jr., doing business as an electrical utility under the name of The Light and Power Utility at Banning, California, be and the same is hereby authorized to execute to The Sierras Construction Company a mortgage of his entire utility property in Banning, California, in substantially the form attached as Exhibit B to the petition herein, on the following conditions and not otherwise, to wit:

1. Said mortgage shall secure the payment of a promissory note for $600.00, bearing interest at the rate of 7 per cent per annum, payable to The Sierras Construction Company.

2. The proceeds from said note shall be used only, as far as they will go, for the following purposes:

(*a*) To pay the Southern Sierras Power Company for electric energy supplied during March and April, 1915, not to exceed $167.45.

(*b*) To pay sundry indebtedness for current expenses, not to exceed $232.55.

(*c*) To pay freight on poles from Newport Beach, not to exceed $100.00.

(*d*) To pay for copper wire to be purchased from city of Los Angeles, not to exceed $130.00.

3. Before executing the mortgage herein authorized applicant shall secure and file with the Railroad Commission a letter from The Sierras Construction Company agreeing to extend the term of the loan herein referred to, if necessary, for one year after the maturity of the note, at an interest rate not to exceed 7 per cent per annum.

4. Within ten days from the execution of the mortgage herein authorized, applicant shall file a copy thereof, as executed, with the Railroad Commission.

5. The authority herein granted shall apply only to such mortgage as may have been executed prior to September 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 4th day of June, 1915.

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Decision No. 2442.

RIVERSIDE PORTLAND CEMENT COMPANY

vs.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, AND WILLIAM G. HENSHAW, DOING BUSINESS AS A RAILROAD CORPORATION UNDER THE NAME AND STYLE OF CRESENT CITY RAILWAY.

Case No. 539.

Decided June 4, 1915.

The cement rate between Crestmore and Los Angeles having been reduced from $1.50 to $1.25 per ton, Cresent City Railway and Southern Pacific Company were directed to agree upon a division of the reduced joint rate or to apply to the Commission for an order establishing such a division, and the Cresent City Railway contending that the Southern Pacific Company should bear the entire reduction, which the latter company is unwilling to do, the matter is laid before the Commission and after a review of the various facts $0.1667 established as the proportion of Cresent City Railway, the balance to the Southern Pacific Company.

Seth Mann, for Complainant.

A. S. Halsted, for San Pedro, Los Angeles and Salt Lake Railroad Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

Geo. D. Squires, and *F. B. Austin*, for Southern Pacific Company.

W. J. Bohon, for Cresent City Railway.

Fred P. Gregson, for California Portland Cement Company.

Report of the Commission.

Loveland, *Commissioner.*

SUPPLEMENTAL OPINION

In the original order in this proceeding the Cresent City Railway and the Southern Pacific Company were ordered to reduce the joint rate on cement in carloads from Crestmore to Los Angeles from $1.50 to $1.25 per ton of 2,000 pounds, and it was further ordered that in the event of the failure of those carriers to agree upon the division of the reduced rate that said carriers appear before the Commission and show cause why the Commission should not proceed with the establishment of divisions as authorized by section 33 of the Public Utilities

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Act. On March 25th the Riverside, Rialto and Pacific Railroad Company, the successor to the Cresent City Railway, petitioned this Commission for a hearing in the matter of divisions, no agreement having been reached as to the division of the reduced joint rate between it and the Southern Pacific Company. Thereupon the Commission issued its order of March 27, 1915, directing the Riverside, Rialto and Pacific Railroad Company and the Southern Pacific Company to appear before the Commission on April 6, 1915, and show cause why this Commission should not proceed and establish the division of said joint rate. A hearing was held on that date and the matter submitted for the Commission's decision.

The former joint rate of $1.50 per ton applying on cement in carloads from Crestmore to Los Angeles was divided between the Cresent City Railway and the Southern Pacific Company by allowing the former line 20 cents per ton and the latter $1.30 per ton. The Riverside, Rialto and Pacific Railroad Company, hereinafter referred to as the Riverside company, contends that its proportion of the through rate should not be further reduced as the cement traffic moving on the joint rates is not now contributing, nor has it in the past contributed, fully to the revenues of that company. To sustain this contention it undertakes to show the cost of handling the cement traffic and the net income accruing therefrom. By its Exhibit "A" it shows that during the year ending December 31, 1914, there was a total of 11,646 cars of freight handled over its entire line. Of this total 6,670 cars or 57.3 per cent were loaded with cement which moved on a joint rate out of which the Riverside company received 20 cents per ton or less. The actual revenue accruing from this traffic was $42,566.23 or 51.3 per cent of the total freight revenue. The total operating expenses and taxes for that year aggregated $67,824.15, and of that amount the Riverside company apportions, on the basis of cars handled, 57.3 per cent or $38,863.23 of that expense, to the cement traffic moving on the joint rates out of which it received 20 cents per ton or less. Deducting this amount from the revenue accruing from cement traffic handled on the joint rates, aggregating $42,566.23, the Riverside company concludes that its net income from this particular traffic is but $3,703.00 or 24.5 per cent of its total income for the entire year, whereas 57.3 per cent of the total loaded cars handled were loaded with this particular traffic, the tonnage of which was 54.5 per cent of the total freight tonnage of the line.

That such apportionment of the expense does not reflect the probable expense of handling this particular traffic becomes apparent from an analysis of the method of apportionment used. The Riverside company made no segregation of the total expense in the first place between the freight and passenger service but charged the entire

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expenses of the line to the freight service although a passenger service was maintained and it received therefrom approximately $6.000.00 net revenue during the year 1914. While the passenger service was then and is now performed by the Pacific Electric Railway Company under an arrangement with the Riverside company whereby the former furnishes and maintains the equipment used in that service and assumes the expense for the train crews and electric energy used, the Riverside company maintains the line and a portion therefore of the maintenance expenses and perhaps of the general and transportation expenses, if not of the traffic expenses, should be charged against the passenger service. In the second place, the method of apportioning the expense to the various classes of freight traffic assumes that the per car expense in each case was the same regardless of the service rendered. The cement plant from which the cement moves is located at Crestmore and the cement delivered to the Southern Pacific Company and the Santa Fe at Riverside Junction, at which point it is interchanged on the joint rates, is handled for a distance of approximately 3.5 miles. The cement delivered to the San Pedro, Los Angeles and Salt Lake Railroad at the interchange with that line at Crestmore is handled for a distance of aproximately one mile. The cement is moved daily from the plant to the junction with these several lines and in most cases the movement is in train loads of three or more cars. That part of the line of the Riverside company, extending for a distance of 5.75 miles north of Crestmore to Rialto, to which point the line was extended from Bloomington and opened for operation on March 25, 1914, is not used by the cement traffic moving on the joint rates, as the lines in connection with which the traffic is handled on these rates interchange at present with the Riverside company only at Riverside Junction and Crestmore. Freight handled between Rialto and Riverside for the distance of 9½ miles or between Bloomington and Riverside for the approximate distance of 6½ miles, is given a much greater service than the cement which is handled only from Crestmore to Riverside Junction or the Crestmore interchange with the San Pedro, Los Angeles and Salt Lake Railroad, and it appears obvious that the expense incident to the movement of a carload of freight is not the same in all cases. The Riverside company admits that during the past year fruit in carloads was handled between Bloomington and Crestmore by special trains and that in such cases the per car expense was undoubtedly in excess of the per car expense of handling cement.

The Riverside company, as heretofore stated, received as its proportion 20 cents per ton out of the former rate of $1.50 per ton on cement from Crestmore to Los Angeles. This division equals in some cases, and in other cases exceeds, some of its local rates. Thus it maintains a rate of 20 cents per ton from Riverside to Crestmore on crude oil in packages or in tank cars and a rate of 10 cents per ton from

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Crestmore to Riverside or Bloomington on crushed rock in carload quantities of 40,000 pounds or more. It likewise maintains a rate of 25 cents per ton from Riverside to Crestmore on coal, gypsum and lumber in carload quantities of 40,000 pounds or more. It also maintains the same rate from Crestmore to Riverside on sugar beets in carload quantities of 80,000 pounds or more. While it is true, as the Riverside company contends, that most of these commodities are of lower grade than cement and therefore should properly bear a lower transportation rate, it seems inconsistent that the Riverside company should contend for a proportion of the rate on cement equivalent to its local rate on fuel oil which is generally classified as a higher grade commodity than cement, or expect as a division of the rate on cement an amount twice as great as its local rate on crushed rock and but 5 cents per ton less than its local rate on lumber from Riverside to Crestmore. The principal traffic of the Riverside company consists of cement, rock, oil and gypsum, and upon the Commission's request that company furnished a statement showing for the year 1914 the tonnage of and the revenue received from that traffic as well as the tonnage of and revenue received from all other freight traffic handled during that period and an apportionment of the entire expense to each class of this traffic on the basis used by the Riverside company in its Exhibit "A" heretofore commented upon—that is, on the basis of cars handled —indicates that whereas the cement, oil, gypsum and general traffic of the line is handled at a profit that a material deficit results from the rock traffic.

It is contended by the Riverside company that during the past eight months the cement traffic over its lines has decreased materially and that inasmuch as it is dependent largely upon that traffic for its revenue that any reduction of its proportion of the through rate on cement will materially affect its revenues and deprive it of sufficient income wherewith to meet bond interest and sinking fund requirements. This condition would not, however, justify the Commission's allowing the Riverside company an unreasonable division of the rate at the expense of the more prosperous connecting lines participating in through rates. Nor was the predecessor of the Riverside company heard to offer such an objection to the proposed reduction in the rate in the original proceeding, but a *pro forma* defense to the reductions proposed by the complainant was advanced by it. While it filed an answer generally denying the allegations of the complaint it submitted no evidence, presented no brief, or made any argument in support of the joint through rates attacked, or of its proportion of said rates. The only conclusion which could have been drawn from its failure to defend the rates in which it was jointly interested was that it was willing that the reduction asked should be granted. The Riverside company now

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states that its predecessor made no defense other than to file its denial of the allegations of the complaint, for the reason that it relied upon the other lines, parties to this proceeding, to do so, but in view of the attitude of the other defendants toward the predecessor of the Riverside company throughout the entire proceeding, it is inconceivable how it could have rested upon this assumption. At the hearing on the rates the apparent unconcern of the Cresent City Railway in the matter and its failure to defend was referred to by the other defendants as indicative of the close relation existing between the cement company and the Cresent City Railway, and in the brief filed only "for defendants, other than Cresent City Railway," it was said that it was significant that the Cresent City Railway offered no objection to the proposed reduction in its revenues.

It is indeed a late hour for the Cresent City Railway, or its successor, to come before this Commission and seek to defend the rates attacked in so far as its own interests are concerned, and plead that to that extent no reduction in the rates should be made. I am not convinced from the evidence which has been submitted in this latter proceeding that the Commission's conclusion in its original decision in this matter that the rate should be reduced, and that the delivering carriers should not be required to bear this entire reduction, is incorrect. And it is my opinion that the Riverside company and the Southern Pacific Company should prorate the reduced rate, using as factors to obtain the percentages the division of the former rate. In this manner each line will stand a proportionate reduction in its division of the rate which I believe is just and fair to each carrier.

An examination of the accounts of this company by the Commission's auditing department does not fully substantiate the statement of the Riverside company that if its proportion of the through rate is reduced, as indicated, that its revenue will be insufficient to meet its operating and other expenses. Based on its operations for the calendar year of 1914, and taking into consideration the more favorable contract covering the operation of the Pacific Electric Company's passenger trains over its tracks, which will be in force during the current year, the company's revenues promise to be sufficient to meet operating and other expenses if no extraordinary increases are made therein because of reorganization.

I submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

The Cresent City Railway and the Southern Pacific Company having been unable to agree upon the division of the joint rate of $1.25 per ton of 2,000 pounds heretofore established in this proceeding by this Commission for the transportation of cement in carload lots from

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Crestmore to Los Angeles, and an application having been made to this Commission asking that it proceed with the establishment of the division of the rate as authorized by section 33 of the Public Utilities Act; and a regular hearing having been held and the Commission, being fully apprised in the premises, finds as a fact that a just and reasonable division of said joint rate is to allow the Southern Pacific Company $1.0833 and the Riverside, Rialto and Pacific Railroad Company $0.1667.

It is hereby ordered that the joint rate of $1.25 per ton of 2,000 pounds heretofore established in this proceeding by this Commission for the transportation of cement in carload lots from Crestmore to Los Angeles by the Cresent City Railway, the predecessor of the Riverside, Rialto and Pacific Railroad Company, the petitioner, and the Southern Pacific Company, be divided by allowing the Riverside, Rialto and Pacific Railroad Company for its service from Crestmore to the junction with the Southern Pacific Company $0.1667 per ton of 2,000 pounds, the remainder to accrue to the Southern Pacific Company.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of June, 1915.

DECISION No. 2443.

EAST BAKERSFIELD IMPROVEMENT ASSOCIATION

vs.

BAKERSFIELD WATER COMPANY.

Case No. 713.

Decided June 4, 1915.

Defendant petitions for a rehearing in the above entitled matter contending that the Commission in its valuation omitted certain items of its property which defendant had failed to list for the Commission engineers, and a review of the data submitted showing that the valuation of defendant's property should be corrected to show a value of $91,207.00; prior decision amended accordingly, though no change made in the schedule of rates heretofore established. Rules and regulations established for defendant also amended to comply with an ordinance of the city of Bakersfield limiting the hours for sprinkling lawns.

E. L. Foster, for Defendant.

E. J. Emmons, for Complainant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

OPINION ON PETITION FOR REHEARING.

This is an application for a rehearing of Case No. 713 heard by this Commission on March 2, 1915, and decided on March 31, 1915. Previous to that hearing the engineering department of the Commission made a valuation of the property of the Bakersfield Water Company, defendant herein, which was introduced at the hearing, and ample opportunity was given defendant to cross-examine the engineer of the Commission who presented the valuation and supported it by testimony. No serious criticism of or objection to such valuation was offered.

In its petition for a rehearing defendant alleges that property to the amount of several thousand dollars was omitted from the valuation made by the engineering department of the Commission, not through the fault of the Commission's engineer, but because defendant had failed to include all of its property when listing it for the engineer of the Commission; and also that the valuation placed upon some of defendant's property by the Commission's engineer was too low, as would be shown by original cost data which defendant alleged could be presented.

Some criticism was submitted by witnesses for the Bakersfield Water Company of the estimated cost found by the Commission's engineer of 4-inch cast iron pipe; such criticism was as to the cost of the pipe laid, and not as to the original cost of the pipe. Examination of the records of the company disclosed the fact that the contract for laying the pipe was let to Mr. Thomas C. Williams, an official of the water company and a brother of the president of said company, by reason of which fact it may fairly be assumed that the price for doing this work was not a competitive one. I shall not recommend that any change be made in the Commission's former valuation of the pipe.

In this matter the Commission pursued its usual course and granted defendant an opportunity to present argument and evidence as to whether a rehearing should be granted. The argument was heard in the city of Bakersfield, May 19, 1915, at 10 a. m.

Defendant was permitted to introduce testimony in support of its claim that the list of defendant's property furnished the Commission's engineers at the time the valuation was made was not complete and that it now had further and complete cost data, which it claimed would enable the Commission's engineers to correct the part of the valuation which defendant claims was too low, owing to the Commission's engineers not having had the cost data when the valuation was made.

Defendant did not ask that the rates and charges fixed by the Commission in this proceeding, as just and reasonable for defendant's

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water system, be changed or modified, but did ask that the items alleged to have been omitted from the valuation made by the Commission's engineering department, and corrections alleged to be necessary as to other items in order that the valuation fixed by the Commission might include all of the property of defendant, be based, so far as possible, upon actual cost data, and be added to the valuation of defendant's system as found by the Commission in this proceeding.

As a result of the former hearing the Commission prepared certain rules and regulations for defendant's water system, which defendant was ordered to put into effect. In the second hearing defendant asked that to one of these rules, to wit, Rule No. 17, be added a provision to comply with Ordinance No. 230 of the city of Bakersfield, by the terms of which sprinkling of lawns and gardens must be done at certain hours only, and then only through a hose with a nozzle no larger than ¼-inch. By Exhibits "A" to "Q," inclusive, defendant, at the second hearing, submitted original cost data and statements which constitute a complete and corrected inventory or list of all of the property of the Bakersfield Water Company's system, which statements have been carefully checked by the engineer of the Commission with the result that he now reports that $3,256.00 should be added to the value of the water system of the Bakersfield Water Company found by the Commission for items not included in the former valuation and largely not used and useful at present; and $1,050.00 should also be added for correction of land values concerning which more information is now available. The engineering department of the Commission has prepared and filed, as a part of the record in this case, a report showing why these additions to plant value should be made. I have carefully examined and approve of this report.

Defendant further shows that since the valuation of this system was made by the engineer of the Commission, defendant has expended $5,000.00 in extending its system so as to enable it to serve the Southern Pacific Company, and that it is now furnishing that company with ten to twelve million gallons of water monthly.

The record also shows that defendant contemplated making this extension, but naturally the Commission could not include the cost thereof in the valuation nor consider it in fixing just and reasonable rates for the system as it was then. The Commission is now asked by defendant to fix the rate to be charged the Southern Pacific Company for the water furnished that company by defendant, but I believe we should first give defendant and the Southern Pacific Company an opportunity to agree upon a just and reasonable rate with the understanding that, in the event of the parties in interest failing to agree, the Commission, upon request, will establish a just and reasonable rate.

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I find as a fact that the sum of $3,256.00 should be added to the valuation of the Bakersfield Water Company heretofore found by this Commission in this proceeding, because of omissions of property belonging to said Bakersfield Water Company from said former valuation, but not used and useful in serving present consumers.

I further find as a fact that the sum of $1,050.00 should also be added to said valuation because of corrections in said valuation justified by more accurate and additional cost data.

I further find as a fact that the sum of $5,000.00 should be added to said valuation, said $5,000.00 being the amount expended by said Bakersfield Water Company in the construction of an extension to serve the Southern Pacific Company, which addition will make the total present value of the property of the Bakersfield Water Company, as now found by the Commission, $91,207.00; and I further find as a fact that Rule No. 17 should be amended so as to conform to the ordinance of the city of Bakersfield.

The rates established by the Commission in the order heretofore made in this proceeding have not been questioned by defendant in its petition for rehearing. I am of the opinion that the corrections in the valuation of defendant's water system do not justify any change in the rates heretofore established, and I hereby find as a fact that upon the entire record in this case the rates heretofore established in this proceeding to be charged by defendant are just and reasonable.

With the former decision of the Commission modified in accordance with this opinion, I recommend that defendant's petition for rehearing be denied, and submit herewith the following form of order:

ORDER ON PETITION FOR REHEARING.

Bakersfield Water Company having filed a petition for rehearing in this proceeding and a hearing having been had thereon, and the Commission being duly advised in the premises, and basing its order herein on all the findings of fact contained in the foregoing opinion, and in the former opinion and order herein, the Commission hereby finds as a fact that the present value of the water system of Bakersfield Water Company is $91,207.00.

It is hereby ordered that Rule No. 17 of the rules and regulations established for defendant's water system be amended to read as follows:

> "No water except when taken through meters shall be used for watering gardens, trees, lawns, flower beds, or plants, except between the hours of 5 a. m. and 11 a. m., and 1 p. m. and 5 p. m., and 6:30 p m. and 10 p. m. and through hose nozzles not to exceed ¼-inch in diameter, and no standing sprinklers shall be used without written consent of the company."

It is further ordered that not later than July 1, 1915, Bakersfield Water Company and Southern Pacific Company shall report to this

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Commission whether they have been able to agree upon a rate to be charged for water to be supplied by defendant to Southern Pacific Company. If said parties do agree upon a rate such rate shall become effective when approved by the Commission by supplemental order. If said parties can not agree upon a rate this Commission will proceed to establish a just and reasonable rate for that service.

It is further ordered that in all other respects the petition for rehearing herein be and the same is hereby denied.

The foregoing opinion and order on petition for rehearing are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of June, 1915.

DECISION No. 2444.

R. L. MEADE ET AL.

vs.

PACIFIC GAS AND ELECTRIC COMPANY (VALLEJO DISTRICT).

Case No. 638.

Decided June 4, 1915.

Complainants attack as unjust and exorbitant the present rates of defendant for gas in the city of Vallejo of $1.50 per 1,000 cubic feet up to 10,000 cubic feet, and $1.25 per 100 cubic feet for 10,000 cubic feet or over with a monthly minimum of 50 cents. After a valuation of defendant's system and a review of its operations in the city named:

Held, Defendant directed to establish within twenty days a rate of $1.50 per 1,000 cubic feet for first 5,000, $1.00 per 1,000 cubic feet for next 5,000 and 80 cents per 1,000 cubic feet for amounts in excess of 10,000 per month, with a minimum monthly bill of 50 cents. Rules governing the manner and procedure of testing meters also established.

G. S. Hale, for Complainant.

C. P. Cutten, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This proceeding was initiated by complaint of R. L. Meade and other residents of Vallejo against the rates charged by Pacific Gas and Electric Company for gas supplied in that city.

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The complaint alleges that the rates charged by defendant for gas supplied by it to the inhabitants of Vallejo are excessively high and exorbitant, and the Commission is asked to fix reasonable rates for such service.

Defendant in its answer denies that its rates are excessive and asks that the complaint be dismissed.

Vallejo, a city of some 13,500 inhabitants, was originally incorporated under a special act of the legislature in 1866. The new charter for a commission form of government was adopted in February, 1911. In April, 1914, at an election duly held, the city of Vallejo transferred its control over public utilities, including defendant, to this Commission, and subsequently the complaint in this case was filed under the provisions of section 60, Public Utilities Act.

Gas service is supplied in the city of Vallejo by Pacific Gas and Electric Company, defendant in this case, which corporation owns and operates a gas manufacturing plant located in Vallejo and a distributing system consisting of certain pipe lines, services, meters, etc., used in connection with its said business.

The present rates charged by defendant for gas supplied by it in Vallejo are as follows:

TABLE I.

Present Gas Rates in Vallejo.

$1.50 per 1,000 cubic feet, if consumption is less than 10,000 cubic feet.
$1.25 per 1,000 cubic feet, if consumption equals or exceeds 10,000 cubic feet.
Minimum charge 50 cents per month per meter.

The reproduction cost claimed by defendant for the gas plant and system in Vallejo, based on a valuation made by J. G. White, as of December 31, 1911, and including additions and betterments for the years 1912, 1913 and 1914, is as follows:

TABLE II.

Reproduction Cost of Vallejo Gas Plant and System as of December 31, 1914.

(Statement by Pacific Gas and Electric Company.)

Generating capital	$103,773 82
Transmission capital	4,469 99
Distribution capital	148,809 54
General capital	801 99
Total non-landed	$257,855 34
Landed capital	15,750 00
Total	$273,605 34
Working capital	7,466 17
Total capital	$281,071 51

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Defendant maintains that the present value of its gas properties and business at Vallejo is equal to the full reproduction value new, as shown in Table II, plus $49,373.84 to cover "organization and development cost," making a total present value of about $322,979.00 exclusive of working capital and certain adjustments which brings the total, according to defendant's theory, up to $341,693.00.

The Commission's gas and electric department made a careful investigation into the probable cost to reproduce the property new as of January 1, 1915, and estimates its present depreciated value on the usual straight line basis for computing accrued depreciation. A summary of the results of this investigation is given in the following table:

TABLE III.

Reproduction Cost of Vallejo Gas Plant and System—Depreciation Table and Present Depreciated "Value" as of January 1, 1915.

(Gas and Electric Department, C. R. C.)

	Cost to reproduce new	Annual depreciation	"Present value"
Production capital	$100,151 00	$3,664 00	$78,665 00
Distribution capital	127,662 00	5,331 00	93,935 00
General capital	10,181 00	673 00	8,091 00
Total non-landed	$237,994 00	†$9,668 00	*$180,691 00
Landed capital	12,879 00		12,879 00
Totals	$250,873 00	$9,668 00	$193,570 00
Material and supplies	2,015 00		2,015 00
Totals	$252,888 00	$9,668 00	$195,585 00

†Equivalent annual "rate of depreciation" equals 4.062 per cent equals 24.61 years "average life."

*Equivalent "condition per cent" equals 75.92 per cent equals 6.93 years "average age."

In addition to the above totals an allowance of $5,581.00 has been allowed by the Commission's engineers for "working cash capital," and $1,129.00 as the proportion of "all department capital" chargeable to the Vallejo system.

Defendant's claim that the fair present value of its gas properties in Vallejo is equal to what the cost would be to reproduce the plant and system new at this time, plus an allowance of $49,373.81 for intangible values, is probably based upon a confusion of the term "present service efficiency" and "present value," an error which this Commission has many times called to the attention of public utility representatives. In connection with the present case, I feel that it will not be necessary to go into detail regarding the obvious difference between efficiency and value, or to explain again why the physical elements, at

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least of a property such as the one under consideration which has seen years of service, can not by any possibility have an aggregate value equal to that of a new property consisting of the same units and operating under identical circumstances.

If defendant's contention were correct, which it is not, and no deterioration in the value of its Vallejo properties has taken place during the years which these properties have been operated, it must be perfectly clear that no allowance for a depreciation reserve would be necessary or allowable. Such, however, is not the contention of defendant, as it is evident from the fact that it claims an allowance for the year 1914, of $11,145.03 for depreciation, in addition to $3,817.16 for obsolescence, inadequacy and contingencies.

It is also worthy of note that the contingency due to fire hazard is separately provided for by a claimed allowance of $2,219.63 for fire insurance, which insurance defendant itself carries.

The allowance for depreciation made by the Commission's engineers, which contemplates an average life of approximately twenty-five years, is only 64.61 per cent of the allowance for this item claimed by defendant, and it may be well to note that upon the depreciation theory of defendant, the present or depreciated "value" of the non-landed gas properties in Vallejo would be only some 65 per cent of that shown in Table III.

Defendant's claim that $49,373.81 should be allowed for organization and development cost, is supported only by a highly theoretical assumption of what that cost might be in the case of a hypothetical comparative gas plant. No evidence was introduced, and possibly none was available, tending to show what the actual organization and development cost was in connection with these properties. However, in absence of more definite information on the subject, I am unwilling to assume that the proper allowance for intangible values, which defendant claims must exist in connection with an operating gas property, can be properly measured by the methods adopted by defendant in this case.

After very careful consideration of all the evidence bearing upon the question of values applicable to defendant's plant and business in Vallejo, I am of the opinion that a fair and reasonable value of these properties for the purpose of this case is $219,295.00.

A summary of defendant's statement of revenue and expenses in the Vallejo district for the year 1914 is shown in the following table:

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TABLE IV.

Statement of Revenues and Expenses, Vallejo District.

(Pacific Gas and Electric Company.)

Gross Revenue.		
1. Prepaid gas	$4,478 55	
2. Commercial light, heat and power	70,320 75	
3. Minimum charges	362 95	
4. Rental gas accounts	9 00	
Total revenue, 1914		$75,171 25
Expenses.		
5. Production (operation)	$14,754 03	
6. Production (maintenance)	1,857 57	
Total production		$16,611 60
7. Distribution (operation)	$12,831 56	
8. Distribution (maintenance)	4,042 04	
Total distribution		16,873 60
Total operation and maintenance		$33,485 20
9. Taxes	$3,147 23	
10. Floating debt interest	604 45	
11. Uncollectible accounts	222 85	
12. Administrative expenses	3,897 21	
Total administrative and general expenses		7,871 74
Reserves.		
13. Fire insurance	$2,219 63	
14. Casualty insurance	349 07	
15. Depreciation, obsolescence, inadequacy, contingencies	14,962 29	
Total reserves		17,530 89
Total cost of service		$58,887 83
Net income, 1914		$16,283 42

In connection with the cost of service shown in Table IV, and while generally speaking the operating and maintenance expenses appear to be reasonable, certain items are subject to criticism. For example, the operation and maintenance of commercial arc lamps, not including the gas used, appears to be excessive in comparison with the revenue derived from the rental of these appliances. It may well be that the free maintenance of commercial arc lamps is necessary to enable defendant to compete in the lighting field with electricity where this service is supplied by another company, but if a material loss exists in connecting with the service supplied to commercial lighting consumers, such loss can not be absorbed by higher rates to defendant's domestic patrons. The item "sets and accounts, $587.22" indicates that there is a considerable amount of gas sold to transient consumers,

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necessitating the frequent setting and removing of meters, and it may be necessary at some later time, if there is a material increase in the expense, to provide a charge which will protect the more permanent patrons. As to general and administrative expenses, including reserves, I am of the opinion that while the allowance made by the Commission's engineers for "administrative expense" appears somewhat high, this item with other items shown in the following tabulation may be considered as being reasonable for the purpose of this case.

TABLE V.

General and Administrative Expense and Reserve, Vallejo District.

General and Administrative Expense.		
General administrative expense	$3,147 00	
Uncollectible accounts	223 00	
Taxes	3,946 00	
		$7,316 00
Reserves.		
Fire insurance	$1,323 00	
Casulty insurance	297 00	
Depreciation, obsolescence, etc.	9,668 00	
		$11,288 00

The total gas sold in Vallejo for the year ending December 31, 1914, was 52,014,800 cubic feet, but owing to a material decrease in the sales to certain classes of defendant's consumers, it is extremely difficult to accurately estimate the probable sales for 1915. Another element of uncertainty is the probable expense of removing, relocating and replacing street mains incidental to the rather important street improvements being carried on by the city.

In this connection it is interesting to note that largely as a result of street work in Vallejo, defendant's expense for the maintenance of street mains has been greatly in excess of normal. The expenditure on this account for the years 1912, 1913, and 1914 was $2,369.89, $6,616.36, and $313.60, respectively, and incidentally the cost of maintaining services during the same period and apparently for the same reason, was $3,162.04, $5,099.57, and $859.27. Defendant claims, and the claim is not disputed, that the street improvements are yet uncompleted and that as a result it will be necessary to make further relatively large expenditures in the near future. The importance of the expenditures mentioned and the necessity for giving them careful consideration in connection with the present case, will be apparent when it is understood that the cost to defendant of maintaining street mains and services alone during the past three years has averaged 13.95 cents for every 1,000 cubic feet of gas sold in Vallejo during that time.

Owing to the uncertainty existing in connection with the matters referred to and in fairness to defendant, I do not feel justified in

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recommending a reduction of the maximum rate at this time. There are, however, certain adjustments which should be made in the rate charged by defendant for gas in Vallejo in order to differentiate between the cost where small and relatively large quantities of gas are consumed. While the immediate effect of such a schedule will be to reduce the rates now paid by the larger domestic and industrial consumers, the increased plant output, which it is believed will follow the establishment of the rates herein recommended, should ultimately result in lower rates to all consumers of gas in Vallejo.

After a careful consideration of all the evidence, I find that the following rates are just and reasonable, and that their application will result in sufficient revenue to permit a return of at least 8 per cent upon a fair and reasonable valuation of defendant's gas plant and business in Vallejo district after amply providing for all operating costs and all proper reserves for the protection and replacement of the property.

TABLE VI.

Rates for Gas, Vallejo District.

$1.50 per 1,000 cubic feet for the first 5,000 cubic feet used per month.
1.00 per 1,000 cubic feet for the next 5,000 cubic feet used per month.
.80 per 1,000 cubic feet for all over 10,000 cubic feet used per month.
Minimum charge 50 cents per month per meter.

The above rates are intended to apply to gas having an average heating value of at least 600 British thermal units per cubic foot supplied at a uniform and adequate pressure measured at the outlet of the meters located on consumers' premises.

In providing proper rates for gas sold by defendant in the Vallejo district, it will also be necessary to indicate certain regulations bearing on the matter of the accuracy of service meters. These regulations should provide in effect as follows:

(*a*) Each service meter shall be tested for accuracy before its installation.

(*b*) No service meter shall be placed in service or allowed to remain in service which has an error of registration in excess of two per cent.

(*c*) The company shall, at its own expense, make a test of the accuracy of any meter upon request of a consumer, provided such consumer has not made a request for the test of the same meter within a period of six months. A written report, giving the results of any test made at the request of a consumer, shall be furnished to the consumer within five days after the completion of such test.

(*d*) A complete detailed record shall be kept by the company of all meter tests made by it.

I recommend the following form of order.

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ORDER.

Public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision, the Commission hereby finds as a fact that the rates now being charged by Pacific Gas and Electric Company for gas supplied by it in the Vallejo district are unjust and unreasonable in so far as said rates differ from the rates prescribed in this order, and the Commission further finds as a fact that the rates, charges and rules applicable thereto, herein prescribed, are just and reasonable, and basing its order upon the above findings of fact and on the further findings contained in the opinion which precedes this order,

It is hereby ordered that Pacific Gas and Electric Company, within twenty (20) days from the date of the order, publish and file with this Commission and thereafter charge and collect for artificial gas supplied by it in and adjacent to the city of Vallejo, the following rates and charges:

$1.50 per 1,000 cubic feet for the first 5,000 cubic feet used per month.
1.00 per 1,000 cubic feet for the next 5,000 cubic feet used per month.
.80 per 1,000 cubic feet for all over 10,000 cubic feet used per month.
Monthly minimum charge 50 cents per meter.

It is further ordered that in connection with the rates herein established, the following rules relating to the testing and accuracy of service meters shall be observed:

(*a*) Each service meter shall be tested for accuracy before its installation.

(*b*) No service meter shall be placed in service or allowed to remain in service which has an error of registration in excess of 2 per cent.

(*c*) The company shall, at its own expense, make a test of the accuracy of any meter upon request of a consumer, provided such consumer has not made a request for the test of the same meter within a period of six months. A written report, giving the results of any test made at the request of a consumer, shall be furnished to the consumer within five days after the completion of such test.

(*d*) A complete detailed record shall be kept by the company of all meter tests made by it.

It is to be distinctly understood that the rates herein prescribed are intended to apply to artificial gas having an average heating value of not less than 600 British thermal units per cubic foot, supplied at uniform and adequate pressure measured at the meter outlet.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of June, 1915.

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Decision No. 2445.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS, YOLO COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY AT GRADE ACROSS THE TRACK OF SACRAMENTO AND WOODLAND RAILROAD COMPANY BETWEEN SECTIONS 25 AND 26, TOWNSHIP 10 NORTH, RANGE 2 EAST, M. D. B. M.

Application No. 1584.

Decided June 4, 1915.

Applicant applies for permission to construct a county road across the track of Sacramento and Woodland Railroad at grade, and it appearing that such crossing is necessary and will be reasonably safe, application granted, applicant to bear costs of such construction.

H. M. Stitt, for Applicant.

T. T. C. Gregory, and *James W. Armfeld,* for Sacramento and Woodland Railroad Company.

C. W. Thomas, for A. W. Morris.

Report of the Commission.

Gordon, *Commissioner.*

This application was filed under the provisions of section 2694 of the Political Code, as amended January 2, 1912. The petition requesting the appointment of viewers was signed by twelve people, and the hearing was held in the rooms of the board of supervisors, as prescribed by law, on June 1, 1915.

The road sought to be opened in this application is a north and south road extending from the county road, immediately south of the Sacramento and Woodland Railroad, 2½ miles north to where it joins a road now open. To the west the nearest open road is a distance of 1 mile but to the east there is no road open between this point and the Sacramento river.

Most of the signers of the application to the supervisors requesting viewers are owners of property in the territory which will be served by the opening of this new road. The immediate need for this road is to enable people living along it to reach the county road and the track of the Sacramento and Woodland Railroad Company without detouring to reach the road to the west, and although this immediate need is not great, the territory on both sides of the road has been subdivided and sold and as the country develops it will more and more largely serve public convenience. The proposed crossing will be across

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an embankment of the Sacramento and Woodland Railroad Company about 5 feet high. There are no obstructions to the view. The track is on a tangent in this vicinity and approaching trains can be seen a long way in both directions. There is a private farm crossing in place at the present time which can be widened and which will make the cost of this crossing considerably less than it would otherwise be. I believe this application should be granted, and I recommend the following form of order:

ORDER.

Board of Supervisors, Yolo County, California, having applied to the Commission for permission to construct a public highway at grade across the track of Sacramento and Woodland Railroad Company, and a public hearing having been held, and it appearing that public convenience requires the opening of this crossing,

It is hereby ordered that Board of Supervisors, Yolo County, California be and the same hereby is granted permission to cross the track of Sacramento and Woodland Railroad Company at grade with a public highway, between sections 25 and 26, township 10 north, range 2 east, M. D. B. M., as shown more particularly on the map attached to the application; said crossing to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing shall be borne by applicant.

(2) The expense of maintaining the crossing on each side of the track and up to within two (2) feet thereof shall be borne by applicant. The expense of maintaining the crossing over the track and to a distance of two (2) feet on each side thereof shall be borne by Sacramento and Woodland Railroad Company.

(3) Said crossing shall be constructed of a width not less than twenty-five (25) feet, with grades of approach not exceeding six (6) per cent, and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of June, 1915.

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DECISION No. 2446.

IN THE MATTER OF THE APPLICATION OF NORTH SACRAMENTO LIGHT AND WATER COMPANY FOR AN ORDER AUTHORIZING THE CHARGE AND COLLECTION OF CERTAIN WATER RATES.

Application No. 1651.

Decided June 4, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant having at the hearing in the above entitled matter, held June 3, 1915, made request that this proceeding be dismissed,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 4th day of June, 1915.

DECISION No. 2447.

LOTTIE N. SMOOT, HEINRICH E. EY, BERTHA HAGEDORN, HENRY BROWN, GEORGE C. MULLEN, C. L. MACKI, WILLIAM H. TAYLOR, AND MRS. ANNA WARD

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 790.

Decided June 4, 1915.

Complainants petition the Commission to compel defendant company to extend its gas mains so as to enable them to receive gas service, and it appearing that the probable returns from the extension requested would not compensate defendant for the necessary expense of such construction, and also as considerable portions of Peralta street over which the extension is requested is not graded, which would probably require defendant to relay its mains within a short time,

Held, Defendant directed to lay its mains as far as Peralta street is graded and to serve such consumers as can be reached therefrom at the regular rates.

Lottie N. Smoot, in propria persona.

C. P. Cutten, for Pacific Gas and Electric Company.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an action to compel the defendant, Pacific Gas and Electric Company, to extend its mains and furnish gas for domestic purposes to the complainants residing on Peralta avenue in the city of Oakland. The complaint states "that the defendant has at all times refused and still refuses to extend its gas mains along Peralta avenue * * * unless the complainants advance the total cost of said extension to be refunded on the basis of 20 per cent of the monthly bills for gas delivered." Further "that Peralta avenue between Madeline and Carmel streets in the said city of Oakland is now being improved and it is the desire of these complainants that defendant corporation extend its gas mains to each and all of the * * * complainants before the completion of the street improvement referred to."

In its answer filed April 12, 1915, defendant contends "that in order to furnish complainants with gas it would be necessary for it to extend its four-inch cast iron main northerly along Peralta avenue, a distance of approximately one thousand six hundred fifty-six feet (1,656) at an estimated cost including meters and services, of one thousand four hundred twenty-six and 60/100 dollars ($1,426.60). * * * that the estimated gross annual revenue to be derived under its schedule of rates applicable to the class of service required by complainants, would not exceed the sum of one hundred dollars ($100.00), that said extension if made by defendant would be unprofitable to defendant and would throw an unwarranted burden on the defendant's present customers."

At the hearing evidence was introduced to the effect that Peralta avenue, the street under which the extension would be laid, is graded and improved for a distance of only 467 feet north of the intersection of Madeline street. Defendant through it attorney, Mr. Chas. P. Cutten, agreed to extend over the graded and improved section, which would furnish service to complainants Ward and Smoot, and also to continue extending along Peralta avenue as the grade was established and street improved. The complainants agreed to ascertain when the city would establish an official grade and proceed with the street improvement, and the Commission has been advised by complainants that the property owners on Peralta avenue north of Carmel street are unwilling to remove the fences and deed to the city land necessary for street work.

In an extension of this kind where it is questionable whether or not the extension would net a reasonable return on the investment, I doubt if the utility should be expected to lay its main along ungraded and unimproved streets, thereby risking the additional expense of replacing

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the main when the streets are paved. Were the official grade established so that mains might be laid without risking the certain expense of replacements within a short period, the request of complainants might not be unreasonable. After considering the estimated cost of this extension, revenue to be derived therefrom and probable future growth of the territory involved, and also recognizing the condition of the street under which the desired extension would be laid, I am inclined to believe that the Commission would not be justified in requiring the defendant utility to extend its mains beyond the improved part of Peralta avenue.

I submit herewith the following form of order:

ORDER.

Lottie N. Smoot and others having filed with this Commission a complaint against the Pacific Gas and Electric Company, and the Pacific Gas and Electric Company having filed with the Commission its answer, and a public hearing having been held and the Commission finding that defendant should extend its mains on Peralta avenue north of Madeline street in the city of Oakland, California, as far as said Peralta avenue is graded and improved, and it further appearing to the Commission under the circumstances of this case that it would not be reasonable to require defendant to extend beyond the point mentioned above, therefore

It is ordered that the defendant Pacific Gas and Electric Company be and is hereby ordered to extend its gas main on Peralta avenue north from the intersection of Madeline street as far as said Peralta avenue is graded and improved, and to serve gas therefrom to intending consumers at its established rates.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of June, 1915.

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DECISION No. 2448.

ROBERT B. BIGELOW

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 746.

Decided June 4, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant having made written request that the above entitled application be dismissed,

It is hereby ordered that the same be and it is hereby dismissed.

Dated at San Francisco, California, this 4th day of June, 1915.

Decisions Nos. 2449, 2450, 2451, 2452, 2453 and 2454, grade crossings; not printed.

See end of volume.

DECISION No. 2455.

IN THE MATTER OF THE APPLICATION OF THE WESTSIDE LUMBER COMPANY, YOSEMITE LUMBER COMPANY, HUME BENNETT LUMBER COMPANY, MADERA SUGAR PINE COMPANY AND FRESNO FLUME AND LUMBER COMPANY FOR AN ORDER SUSPENDING CERTAIN RATES ON LUMBER AND ITS PRODUCTS, FILED BY SOUTHERN PACIFIC COMPANY IN SUPPLEMENT NO. 46 TO ITS LOCAL JOINT AND PROPORTIONAL FREIGHT TARIFF, C. R. C. NO. 699, TO BECOME EFFECTIVE MAY 25, 1915.

Application No. 1671.

Decided June 7, 1915.

REPORT OF THE COMMISSION.

The applicants in the above entitled proceeding having filed their petition herein asking that the Railroad Commission make its order suspending Supplement No. 46 to Southern Pacific Company's Local Joint and Proportional Freight Tariff C. R. C. No. 699, containing certain reductions in the rates on lumber and its products from Cole, Weed, Redding, Anderson, Cottonwood, Red Bluff, Chico, Marysville, Yuba City, Honcut and points on the Klamath Falls branch of said

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company to Sacramento and points in the San Joaquin Valley, to become effective May 25, 1915, and a public hearing having been held on said application and the Southern Pacific Company having thereafter filed its Supplement No. 49, effective May 25, 1915, making certain reductions in the rates on lumber and its products from San Joaquin Valley mills to Sacramento, and having thereafter filed its Supplement No. 50 to said Local Joint and Proportional Freight Tariff No. 634, C. R. C. No. 699, making reductions on lumber and its products from said San Joaquin Valley mills to designated points, being Roseville, Auburn, Clipper Gap, Applegate, New England Mills, Colfax and Cape Horn, east of Sacramento, and the Commission being of the opinion, in view of all the facts, that the effective date of said Supplement No. 46 to Southern Pacific Company's Local Joint and Proportional Freight Tariff C. R. C. No. 699 should not be suspended, and having permitted the same to become effective on said May 25, 1915,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 7th day of June, 1915.

DECISION No. 2456.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING ISSUE OF BONDS.

Application No. 1599.

Decided June 7, 1915.

Applicant having outstanding $2,338,000.00 6 per cent collateral trust bonds which become due July 1, 1915, applies for and is granted permission to issue a like face value of collateral trust notes bearing interest at 6 per cent to run for a period of two years, such notes to be exchanged at face value for the bonds.

S. M. Haskins, for Applicant.

A. T. Brock, for Southern California Gas Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

Pacific Light and Power Corporation has an outstanding issue of $2,338,000.00 6 per cent collateral trust bonds, dated July 1, 1910, due July 1, 1915. These bonds are secured by $3,118,000.00 of first mortgage 6 per cent bonds of the Southern California Gas Company.

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It is now proposed by the Pacific Light and Power Corporation to refund these collateral bonds in the sum of $2,338,000.00 by an issue of $2,338,000.00 of collateral trust notes, to be dated July 1, 1915, and to mature July 1, 1917. The new issue of notes is to bear 6 per cent and is to be secured by $3,118,000.00 of first mortgage 6 per cent bonds of the Southern California Gas Company. This, in effect, amounts to a two-year extension upon the collateral trust bonds now outstanding.

The indebtedness represented by these collateral trust bonds will eventually be paid through the sale of the Southern California Gas Company bonds or through payments to the Pacific Light and Power Corporation by the Southern California Gas Company.

This is a refunding of an existing obligation, and I therefore recommend that the application be granted and submit the following form of order:

ORDER.

Pacific Light and Power Corporation having applied to this Commission for authority to issue $2,338,000.00 of 6 per cent collateral trust notes as specified in the foregoing opinion;

And a hearing having been held and it appearing that the purposes for which it is proposed to issue said collateral trust notes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Pacific Light and Power Corporation be granted authority and it is hereby granted authority to issue $2,338,000.00 of 6 per cent collateral trust notes, said notes to be dated July 1, 1915, and to mature July 1, 1917.

The authority herein granted to issue said notes is granted upon the following conditions and not otherwise:

(1) The collateral trust notes herein authorized to be issued shall be used to retire a like amount of applicant's collateral trust bonds on such basis that for every collateral trust note of the face value of $1,000.00 herein authorized to be issued, the applicant shall retire one of its outstanding collateral trust bonds of the face value of $1,000.00.

(2) The collateral trust notes herein authorized to be issued shall be issued only after this Commission shall have approved the trust agreement under which said collateral trust notes are to be issued.

(3) Pacific Light and Power Corporation shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the notes hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such

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moneys, all in accordance with this Commission's General Order No. 24, which order, is so far as applicable, is made a part of this order.

(4) The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

(5) The authority herein granted shall apply to such notes as shall have been issued on or before April 1, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1915.

DECISION NO. 2457.

IN THE MATTER OF THE APPLICATION OF THE CITY OF CORCORAN IN THE COUNTY OF KINGS, STATE OF CALIFORNIA, AND THE CORCORAN WATER AND GAS COMPANY FOR AN ORDER AUTHORIZING THE PURCHASE AND SALE OF A PUBLIC UTILITY.

Application No. 1705.

Decided June 7, 1915.

REPORT OF THE COMMISSION.

The Corcoran Gas and Water Company having applied to this Commission for authority to sell to the city of Corcoran its entire water and gas distributing system within said city in accordance with the terms of a resolution, a copy of which is attached to this order as "Exhibit A," and the city of Corcoran having agreed to purchase said property in accordance with the terms set forth in said resolution and having joined in this application, and the Commission being of the opinion that this is not a case in which a public hearing is necessary and that the application should be granted,

It is hereby ordered that this application be, and the same is hereby, granted.

Dated at San Francisco, California, this 7th day of June, 1915.

"EXHIBIT A."

Resolved, That the Corcoran Water and Gas Company, a corporation, will agree to sell to the city of Corcoran its entire plant consisting of mains, wells, pumps, motors, tank and such other appurtenances and appliances utilized in conducting the company's business together with lot 14 of block 24½ of the town of Corcoran, and all those certain lots, pieces or parcels of land and the rights and easements set forth and described in Schedule "A" hereunto affixed and made a part hereof, all situate in the city of Corcoran (subject to rights of way for pipe lines, etc., granted to the Pacific Coast Oil Company by deed recorded in Book 19, page 237 Deeds, and modification thereof by deed recorded in Book 27, page 522 Deeds, Kings County Records), for the price and sum of six thousand dollars ($6,000.00) in cash, the

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time for such purchase to extend to a time when an election can legally be held to determine whether the city shall purchase the said plant and a sufficient reasonable time thereafter to allow for the completion of the deal in the event that the election carries.

In the event that the water company shall be obliged to make any expenditure for betterment or extensions, the cost of same shall be added to the price to be paid the water company by the city of Corcoran for said plant. In the event that said election should fail to carry, the board of trustees of the city of Corcoran is to agree to sell to The Corcoran Water and Gas Company any mains or pipes installed by the city as an emergency necessity, should such arise before said election, at the actual cost thereof, or to lease the same to the water company on a rental basis of not to exceed six (6) per cent per annum of the costs thereof from the time of installation of such mains or pipes, and to grant to the said water company such franchise as may be necessary to protect it in making expenditures necessary to meet the demands of the city; and

Be it further resolved, That a copy of this resolution be delivered to the board of trustees of the city of Corcoran, and that the president and secretary of this corporation are hereby authorized to submit this proposition for the immediate consideration of said board of trustees, and that Fred N. Arnoldy, the attorney for this company, be authorized and directed to conduct all necessary negotiations with the said board of trustees in connection herewith, and that in the event said proposition is accepted by the said board of trustees all necessary steps or proceedings be taken immediately to secure the approval of the State Railway Commission to the said proposed sale and transfer, and that the said president and secretary of this corporation be authorized and directed to do any and all things which may be necessary in the premises to carry this resolution into effect and to complete said sale and transfer.

SCHEDULE "A."

All of the following parcels of land, easements and privileges located in the city of Corcoran, county of Kings, State of California, as per map of Corcoran, recorded in Book 1 of Maps, at page 85, and also as per map of block 24½, Corcoran, recorded in volume No. 2, at page 9, of Licensed Surveys, Kings County Records, particularly described as follows:

Parcel No. One: Beginning at a point in the north line of Ross court, as per above mentioned map of Corcoran at the intersection thereof with the northerly extension of the west line of lot 1, block 26; thence northerly at right angles to said Ross court fifty feet; thence easterly at right angles and parallel with said northerly line of Ross court to the west line of Otis avenue; thence southeasterly along the west line of Otis avenue to its intersection with the north line of Ross court; thence westerly along said north line of Ross court to the point of beginning.

Parcel No. Two: Beginning at a point in the easterly line of Park court, as per above mentioned map of block 24½, Corcoran, at the intersection of said easterly line with the easterly extension of the south line of lot 8 said block 24½; thence easterly along said easterly extension of the south line of said lot 8 fifty (50) feet; thence northwesterly parallel with the easterly line of Park court seventy-six and 08/100 (76.08) feet to a point in the easterly extension of the south line of lot 5 in block 24½; thence westerly fifty (50) feet along said easterly extension of the south line of lot 5 to a point in the easterly line of Park court; thence southeasterly along the easterly line of Park court seventy-six and 08/100 (76.08) feet to the point of beginning.

Parcel No. Three: The right to lay, construct, maintain and operate pipe lines, mains, and conduits for carriage and transportation of water or gas in, along and over all streets, alleys and courts in Corcoran, as reserved to the Security Land and Loan Company, its successors and assigns by dedication of the maps of Corcoran and of block 24½, Corcoran, above referred to.

Parcel No. Four: The right to lay, construct, maintain and operate pipes, pipe lines, mains and conduits for transportation of water or gas in the most direct and feasible line between Parcel No. 1 and Parcel No. 2 above described.

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DECISION NO. 2458.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY FOR AN ORDER AUTHORIZING THE INCREASE OF ITS GAS RATES IN THE CITY OF ORANGE AND FOR THE CONSUMERS OF THE PETITIONER OUTSIDE OF THE CITY OF ORANGE AND IN TERRITORY ADJACENT THERETO.

Application No. 1575.

Decided June 7, 1915.

Applicant herein having taken over a number of small gas companies operating in the county of Orange serving artificial gas, secures a supply of natural gas with which it begins serving its consumers during the early part of 1914 at a rate of 75 cents per 1,000 cubic feet up to 10,000 cubic feet in the larger cities which it serves in Orange County, and $1.00 per 1,000 cubic feet up to 2,000 cubic feet in certain of the smaller towns, this rate having been established by agreement between certain of the different city officials and the gas company. Applicant now applies for permission to increase the present gas rate, contending that it is non-compensatory, and a review of applicant's operating conditions since the introduction of natural gas showing that though its receipts were materially reduced when the natural gas was first introduced, they have been steadily gaining and to all appearances will continue so.

Held, Application dismissed without prejudice to its renewal after a sufficient time has elapsed to determine with a more reasonable degree of certainty the reasonableness of the present rates under average conditions, at which time such losses as may be sustained by applicant will also be given consideration.

Le Roy M. Edwards, for Applicant.

Hartwick & Pearce, for City of Orange.

E. J. Marks, for City of Fullerton.

Homer G. Ames, for City of Anaheim.

G. H. Scott, for City of Santa Ana.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Southern Counties Gas Company of California for authority to increase rates for gas in the city of Orange.

Southern Counties Gas Company of California was organized on February 24, 1911, and subsequently acquired by purchase the following gas properties in Los Angeles and Orange counties:

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TABLE I.

Properties Acquired by Southern Counties Gas Company of California.

From whom acquired	Date of purchase	Location of properties
1. Piedmont Gas Company	April 1, 1911	Monrovia and vicinity
2. Covina Valley Gas Company	April 1, 1911	Covina and vicinity.
3. Southern California Edison Co.	April 1, 1911	Whittier.
4. Southern California Edison Co.	April 1, 1911	Santa Ana.
5. Orange County Gas Company	April 1, 1911	Orange, Anaheim and Fullerton.

The gas properties involved in this proceeding are located entirely within Orange County and include, in addition to a gas manufacturing plant in Santa Ana, which is not now in use, and a high pressure transmission system connecting the several communities served with the source of natural gas supply, distribution system in the following named cities and towns:

TABLE II.

Cities and Towns Supplied by Southern Counties Gas Company of California in Orange County.

Name	Classification	Estimated population
1. Santa Ana	City 5th class	12,500
2. Orange	City 6th class	4,000
3. Anaheim	City 6th class	3,500
4. Fullerton	City 6th class	3,000
5. Garden Grove	Unincorporated	1,100
6. Tustin	Unincorporated	900
7. Placentia	Unincorporated	700

The present rates in effect in Orange County are shown in Table III.

TABLE III.

Rates For Natural Gas in Orange County.

(Southern Counties Gas Company of California.)

SCHEDULE "A."

Applicable to natural gas for "all ordinary domestic consumption and for industrial consumption having peak load demands."

Effective in the cities of Santa Ana, Orange, Anaheim and Fullerton and on intervening county roads.

First	10 M cu. ft. per month	75 cents per M
Next	5 M cu. ft. per month	70 cents per M
Next	5 M cu. ft. per month	65 cents per M
Next	10 M cu. ft. per month	60 cents per M
Next	10 M cu. ft. per month	55 cents per M
Next	10 M cu. ft. per month	50 cents per M
Next	20 M cu. ft. per month	45 cents per M
Next	30 M cu. ft. per month	40 cents per M
Next	50 M cu. ft. per month	35 cents per M
All over	200 M cu. ft. per month	30 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1.00 per meter in unincorporated territory.

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SCHEDULE "B."

Applicable to natural gas for "industrial consumption without peak load demand."

Effective in all territory served in Orange County.

First 10 M cu. ft. per month	75 cents per M
Next 10 M cu. ft. per month	40 cents per M
Next 10 M cu. ft. per month	30 cents per M
Next 20 M cu. ft. per month	20 cents per M
All over 50 M cu. ft. per month	15 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1.00 per meter in unincorporated territory.

SCHEDULE "C."

Applicable to natural gas "for all gas engine power."

Effective in all territory served in Orange County.

Straight rate	30 cents per M

Minimum monthly charge: 50 cents per meter in cities and $1.00 per meter in unincoporated territory.

SCHEDULE "D."

(*Tustin rate.*)

Applicable to natural gas "for all ordinary domestic consumption and for industrial consumption having peak load demands."

Effective in Placentia, Garden Grove, Tustin and on county roads adjacent thereto.

First 2 M cu. ft. per month	100 cents per M
Next 3 M cu. ft. per month	80 cents per M
Next 10 M cu. ft. per month	75 cents per M
Next 15 M cu. ft. per month	60 cents per M
Next 30 M cu. ft. per month	50 cents per M
Next 40 M cu. ft. per month	40 cents per M
Next 50 M cu. ft. per month	35 cents per M
All over 150 M cu, ft, per month	30 cents per M

Minimum monthly charge: $1.00 per meter.

Petitioner's present application contemplates increasing only the rates now in effect in the city of Orange as shown in Schedule "A," Table III. The rates which petitioner asks authority to establish in Orange are the same rates now effective in certain unincorporated territory in Orange County as shown in Schedule "D," Table III.

Until about May, 1914, the people of Orange were supplied with artificial gas from petitioner's gas manufacturing plant at Santa Ana through a high pressure line which also supplied the cities of Anaheim and Fullerton and certain unincorporated towns and rural territory. At that time the transmission system of petitioner consisted of a 4-inch line extending from Santa Ana in a northwesterly direction to the city of Anaheim and from Anaheim a 3-inch line extended on to Fullerton, there connecting with a 2-inch line which supplied Placentia. The rates in Orange for artificial gas, as fixed by the Commission in Application No. 380, were $1.22 per 1,000 cubic feet for the first 10,000 and $1.00 per 1,000 cubic feet for all gas used in excess of 10,000 cubic feet per month.

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Apparently petitioner entered into serious negotiations for the purchase of a supply of natural gas during the latter part of 1913, and on November 17th of that year it entered into an agreemnet with the city of Fullerton under the terms of which agreement and in consideration of the city of Fullerton not installing a municipal gas distributing system, petitioner obligated itself to have natural gas ready for distribution to the inhabitants of that city "within ninety days from the 21st day of October, 1913." Petitioner further agreed to

> "use its best endeavors to secure a sufficient supply of natural gas for distribution to the citizens of the city of Fullerton; that it will purchase said gas from whatever source may be available, and as long as said supply lasts will, if it is possible for the first party to secure said gas, distribute the same for sale to the citizens of the city of Fullerton."

It is further agreed that the said natural gas

> "will not be mixed with artificial gas, and will contain the best possible number of heat units to the cubic foot thereof."

The price at which natural gas is to be sold in the city of Fullerton shall be

> "not more than the sum of seventy-five cents (75¢) per thousand cubic feet for gas used for domestic purposes and that by and with the consent of the board of trustees of the city of Fullerton a reasonable reduction from the price for gas used for domestic purposes will be made for gas used for manufacturing and industrial purposes."

The agreement referred to further provides

> "that at no time during the life of this agreement will the party of the first part charge its consumers more than the rate hereinbefore specified for gas sold in the city of Fullerton, unless a rate in excess thereof is fixed by the board of trustees or other rate fixing body having jurisdiction to fix rates in said city."

Having obtained assurance of at least its initial market and forestalled the installation of a municipal distribution system by the city nearest the natural gas fields, petitioner proceeded to secure a supply of gas sufficient for its needs.

Early in 1914 arrangements were made by petitioner for a supply of natural gas from the Olinda oil fields and on January 23, 1914, one A. S. Bradford, assigned to petitioner his contract with the Petroleum Development Company, which contract was dated January 15, 1914, and provided substantially as follows:

> (*a*) Petroleum Development Company agrees to sell to A. S. Bradford and the latter agrees to purchase and receive from the

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former daily for five years all natural gas which Petroleum Development Company "has to spare and desires to dispose of up to 1,000,000 cubic feet per day of 24 hours." A. S. Bradford is given first right to purchase any natural gas in excess of 1,000,000 cubic feet per day which Petroleum Development Company "desires to dispose of."

(*b*) Petroleum Development Company is obligated to sell to A. S. Bradford

> "only the gas it has available, after retaining all that is necessary for its requirements of every nature, it being the sole judge thereof; which shall include the pumping of water, and topping, cleaning or refining its gas and oil, by itself or through any third party; also gas for its employees and others living upon its property and upon the property of the Atchison, Topeka and Santa Fe Railway Company, including the depots at Olinda and Richfield."

(*c*) Gas is to be measured by a meter furnished and maintained by Petroleum Development Company and the volume of gas is to be computed on a four ounce basis at an altitude of 530 feet above sea level at 60° Fahr.

(*d*) A. S. Bradford agrees to furnish and install gas engine and booster pump to be located on Petroleum Development Company's premises, said engine and pump to be operated by Petroleum Development Company's employees free of charge.

(*e*) Bills to be rendered by Petroleum Development Company by twenty-fifth of each month.

(*f*) A. S. Bradford agrees to take the gas

> "in its regular and uniform passage and measurement through the meter each hour of the day without interruption or break, up to the specified daily limit, and to pay for same at the agreed price hereinafter mentioned, and no claim that the contractor is unable to dispose of the whole of the gas so delivered or offered, shall be a valid objection to such agreed full delivery."

(*g*) Deliveries of gas to begin as soon as the pipe line of A. S. Bradford has been laid and connections made "but in any case not later than March 15, 1914." Life of contract is for five years with buyer's option of renewal for another like period.

(*h*) Price of gas furnished under this agreement

> "shall be eight cents per 1,000 cubic feet for the first five years of this agreement; if the contractor, his successors or assigns shall elect to exercise his or their option for a second period of five years, as provided in section seven hereof, the price shall not be less than eight cents per 1,000 cubic feet."

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(*i*) Contract may be assigned if the assignment is satisfactory to and accepted by Petroleum Development Company.

(*j*) At expiration of contract purchaser of gas is to have thirty days in which to remove his property from lands of Petroleum Development Company.

On February 18, 1914, the board of trustees of the city of Santa Ana passed and approved Ordinance No. 568, fixing the price at which natural gas should be sold to the inhabitants of that city at seventy-five cents (75¢) per 1,000 cubic feet for "any and all illuminating and heating purposes," and also fixing the minimum charge of fifty cents (50¢) per month. This ordinance also provides "that in the event the failure to supply natural gas extends beyond thirty days," then the price at which artificial gas shall be sold shall not exceed $1.00 per 1,000 cubic feet.

On February 18, 1914, petitioner filed with this Commission, concurrently with a separate application for authorization to issue additional bonds for the purpose of building pipe lines to convey natural gas from the oil fields "to the town of Orange and other localities," an application to charge a rate of 75 cents per 1,000 cubic feet for natural gas to be distributed by petitioner in Orange. This application here referred to sets forth among other things:

> "That a rate of 75 cents per one thousand cubic feet of natural gas is a fair rate for said Southern Counties Gas Company of California to charge for natural gas for domestic purposes within the corporate limits of said town of Orange, and that the board of trustees of said town of Orange have duly passed resolutions stating that said rate of 75 cents per one thousand cubic feet of natural gas for domestic purposes is a reasonable rate and satisfactory to said board of trustees."

As further indicating the plans of petitioner for securing a market for its natural gas and as showing the understanding between petitioner and the several communities as to the price at which this commodity would be sold, I will quote from a report dated May 13, 1914, by William A. Baehr, consulting engineer of Chicago, upon the properties and business of petitioner, in which report, after referring to the Fullerton agreement and the Santa Ana ordinance, heretofore mentioned as providing for seventy-five cent gas, Mr. Baehr says:

> "* * * and the company at the same time voluntarily agreed to furnish natural gas to the cities of Orange and Anaheim at the same figure, and to Garden Grove at $1.00 per thousand cubic feet."

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A careful consideration of the facts above referred to admits of no other conclusion than that the present maximum rate of 75 cents per thousand feet of natural gas sold in the cities of Santa Ana, Orange, Anaheim and Fullerton was arrived at by petitioner after an exhaustive investigation of the entire subject, and that as a result of such investigation petitioner agreed to establish such maximum rate notwithstanding the fact that it was well known to petitioner that the introduction of natural gas would be followed by a temporary loss, both in the quantity of gas sold and in the revenue to be obtained. That a temporary loss was anticipated is evident from the following statement which appears on page 282 of Mr. Baehr's report:

> "The amount of business which the company obtains will depend in a great measure upon the vigor with which it is sought. It is extremely difficult to forecast what amount of gas will be sold during the coming years. In the estimate of the consumption of gas per meter per annum for domestic purposes it has been estimated that this consumption would be lower temporarily, but that it would recover within a comparatively short time, and due to the heating load which will be acquired by reason of the lower price and increased quality, will eventually exceed the present consumption."

A supply of natural gas having been obtained, a market secured and the price for that portion of the supply which was to be consumed by practically all of the consumers then connected, having been fixed by ordinance and agreement at a figure which petitioner itself had proposed, petitioner proceeded to connect the supply with its system. A 6-inch high pressure line was constructed from the Olinda gas field to Anaheim, at which point it feeds petitioner's Orange County system. This line is 8.7 miles in length and was laid at a cost of $32,993.00. It was completed in April, 1914, and the delivery of gas commenced in May.

Due to insufficient well pressure to adequately handle the peak load, and the fact that the draft on this field could not be increased without interference with oil pumping operations, it was deemed necessary to obtain an additional supply. Concurrently a number of large industrial consumers were secured so that it was decided to build a line from the Coyote Hills field. Accordingly on November 18, 1914, a contract was entered into between Murphy and Dillon and Southern Counties Gas Company, whereby the former agreed to supply natural gas to be produced from the wells of the Standard Oil Company at a minimum pressure of 100 pounds per square inch, to an amount not to exceed 2,500,000 cubic feet per day, the minimum being 500,000 cubic feet per day for the first six months, increasing thereafter to 1,000,000 cubic feet after the first year of the contract.

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The contract provides that:

> "The point of delivery of all the gas sold by the sellers and purchased by the buyer hereunder shall be at the terminus of the seller's pipe line at the north line of Commonwealth avenue, immediately adjoining its intersection with the center line of said section 31, township 3 south, range 10 west, in the county of Orange, State of California."

This point is some three miles south of the gas field and the intervening pipe line is owned by the sellers. Also,

> "As part of this transaction the sellers will advance to the buyer funds or the equivalent in materials at current market prices with which the buyer is to install its own six inch gas line from the intersection of the center line of said section 31 with Commonwealth avenue to the city of Fullerton, California, all of which advances the buyer will repay to the sellers on or before the 1st day of July, 1915, together with interest at the rate of 7 per cent per annum from date of advances and to represent said indebtedness the buyer shall make, execute and deliver to the sellers its promissory note or notes in such form as the sellers may require to be secured by a pledge of $35,000.00 face value of the buyer's three year gold notes secured by mortgage upon all of its assets and property."

This portion of the line, 3.6 miles in length, was constructed by petitioner at a cost of $12,356.15.

The gas is measured at the field, at which point delivery is made, at a rate of 10 cents per 1,000 cubic feet.

Subsequent to the execution of this agreement and on April 15, 1915, petitioner executed a contract with the same parties, Murphy and Dillon, whereby petitioner agrees to transmit gas over this line for sale to the Anaheim Sugar Company for which service petitioner is reimbursed at the rate of 1½ cents per 1,000 cubic feet. To render this service, petitioner was compelled to build some 5,700 feet of 6-inch line.

Under the two contracts for purchase of gas heretofore alluded to, petitioner is obligated to receive and pay for

1. (Under the Bradford contract)—All excess gas up to 1,000,000 cubic feet per day, and

2. (Under the Murphy-Dillon contract)—500,000 cubic feet increasing to 750,000 on July 1, 1915, and 1,000,000 on January 1, 1916.

Under actual operating conditions the minimum under the first contract averages 600,000 cubic feet, so that the average total minimum at present is 1,100,000, increasing as heretofore noted.

Petitioner claims an investment in Orange County on February 1, 1915, of $464,829.83 of which $62,635.92 is prorated to the city of Orange. The present or depreciated value of this latter investment, which is claimed to be $61,914.24, made up as follows:

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TABLE IV.

Statement by Southern Counties Gas Company of Investment Prorated to the City of Orange.

	Percentage prorated to Orange	Basis of segregation	Amount prorated to Orange
Intangible:			
1. Organization expense	7.4	Investment	$1,561 47
2. Development expense (accrued deficit)	100	Orange only	2,150 29
Tangible:			
3. Real estate	100	Orange only	1,367 89
4. Distribution system	100	Orange only	27,457 27
5. Local transmission	100	Orange only	833 78
6. Natural gas lines	14.5	Meters	6,479 90
7. Primary transmission line	14.5	Meters	3,459 55
8. Santa Ana gas plant, etc.	14.5	Meters	15,914 76
9. Distribution equipment (southern part of territory only)	20.9	Meters	1,291 62
10. General office furniture and fixtures (entire system)	8.3	Meters	197 71
Total investment			$61,914 24

While the above tabulation is claimed to represent the investment of petitioner in connection with gas service supplied to the city of Orange, it is obvious that the total figure of $61,914.24 is in reality an estimate of the cost to reproduce less an estimated accrued depreciation, the basic figure having been obtained largely from valuation reports heretofore made of petitioner's property.

While I do not feel that it is necessary at this time to go into extensive detail regarding the investment necessary to serve natural gas within the city of Orange, I desire to call attention to the fact that the method of prorating used by petitioner can not but result in an undue burden being placed on the consumers of gas in that city. To make this point clear I will refer to Items No. 6 and No. 7 in Table IV. These gas lines and transmission lines representing, according to petitioner, a joint investment of $68,548.38, during the period from July 1, 1914, to March 1, 1915, supplied the city of Orange with only 7,799,000 cubic feet of natural gas out of a total of 135,970,000 cubic feet sold in Orange County. Notwithstanding the fact that petitioner's patrons in the city of Orange consumed only 5.7 per cent of the gas transmitted through the lines referred to, 14.5 per cent of the total cost of the lines are prorated to Orange on the method used.

Another point worthy of mention is that, notwithstanding the fact that, under the provisions of Ordinance No. 568, passed by the board of trustees of the city of Santa Ana on February 16, 1914, by the terms of which petitioner is required to maintain a manufacturing plant for artificial gas in that city, 14.5 per cent of the cost of the Santa Ana

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plant is prorated by petitioner to the city of Orange. It would appear that, in so far at least as the territory served by petitioner outside the city of Santa Ana is concerned, that the present Santa Ana plant is not necessary at this time, and that it would be more proper to amortize the remaining value of that plant over a period of years than to attempt to maintain it to provide for the rather remote possibility of continued interruption of the transmission system.

There are other rather important questions pertaining to the segregation of capital to Orange, which it will be necessary to consider before a final rate is fixed for that city, but which I will not attempt to discuss at this time.

The cost of service supplied in the city of Orange for the period of seven months from July 1, 1914, to February 1, 1915, is estimated by petitioner to be as follows:

TABLE V.

Statement by Southern Counties Gas Company of Cost of Service in Orange July 1, 1914, to February 1, 1915.

1. Cost of gas delivered (6,359,000 cubic feet)	$773 41
2. Cost of transmission (5.5% of total expense)	90 03
3. Cost of distribution in Orange (actual)	637 87
4. Commercial expenses in Orange (actual)	892 34
5. General expenses (8.3% of total general expense)	1,316 46
6. Taxes (prorated on investment basis)	564 64
7. Amortization of bond discount (prorated on investment basis, 7.4% of total)	284 90
Total expense exclusive of depreciation	$4,559 65
8. Depreciation at $100.00 per month	700 00
Total expense	$5,259 65

The total gross revenue from the city of Orange for the same period covered by Table V is reported as $5,000.84.

Petitioner's statement as to cost of service in Orange is subject to much the same criticism as is the statement of investment set forth in Table IV. By the petitioner's method of prorating the several items of expense, the cost of service in Orange is made to appear much higher than it would be if a more equitable basis of segregation had been used. For example, the item "Taxes" has been prorated on an investment basis when, as a matter of fact, taxes are now, and have for a number of years past, been paid on the basis of gross revenue. On a proper basis, and at the rate effective for the period covered by petitioner's statement, the taxes applicable to petitioner's business in the city of Orange could not have exceeded $409.21 as compared with petitioner's segregation of $564.64 for this item.

The item "General Expense $1,316.46" appears very high in comparison with the other expenses involved, being more than 35 per cent

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of the total of Items No. 1 to No. 5, inclusive, and practically 55 per cent of the Items No. 1 to No. 4, inclusive. This item of expense may, however, be justified upon further investigation.

The item "Amortization of Bond Discount, $284.90" has no place in an operating expense statement, inasmuch as it is essentially a part of the cost of obtaining money to be considered and provided for, when proper, in the rate of return which is allowed.

Item No. 8, "Depreciation at $100.00 per month, $700.00," while possibly justifiable on a "depreciated value" theory, which contemplates a corresponding deduction from capital in determining an equitable basis for estimating a proper rate of return, is much too high on the basis of value set forth in petitioner's statement of investment as shown in Table IV. On petitioner's basis of investment, a proper depreciation annually should be provided by a sinking fund with interest at say 6 per cent. This method would result in an annuity not to exceed $486.00 for the seven months. These adjustments alone which are only tentative, would reduce the total expense, less depreciation, to $4,154.32, leaving $846.52 for interest and depreciation. Obviously the amount thus available is less than it should reasonably be after sufficient time has elapsed for the revenue to again become normal. On the other hand, it is probable that with a careful segregation of the costs properly assignable to service in Orange, the balance applicable to interest and depreciation would be greater than the sum above mentioned. It is also to be expected that, with returns for a full year's operation upon a natural gas basis, the gross revenue will materially increase and a corresponding increase in net earnings will be realized.

Another factor of great importance in its effect on the cost of service is the excessive loss which has heretofore existed, due to inability to dispose of the gas supplied in accordance with contractual minima. It is to be expected that a considerable reduction in this waste will result from the improvement in load factor due to increased industrial sales.

Consideration must be given to the effects of the growth of the industrial load other than the reduction of losses. In any case in which the sale price exceeds cost of gas plus ordinary losses, this class of business obviously reduces the cost of service. It may return even less than this and still have the same effect, provided that it utilizes only gas that would otherwise waste.

One contract which petitioner has secured which will have a most decided effect on its revenue, is that for transmission of gas to the Anaheim Sugar Company, heretofore referred to. Petitioner estimates a net return from this contract of $4,740.00 in 1915, over and above operating expenses and losses. A total estimated investment

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will be required to supply this load of $4,867.00, of which some $2,700.00 is useful and necessary in augmenting transmission capacity. Taking fixed costs at 10 per cent of the balance, we have a net profit of $4,523.00.

In order to determine the effect which the introduction of natural gas and the reduction of rates has had upon petitioner's business in Orange, and whether or not the present conditions, as pointed out by petitioner, may be considered as permanent or only of a temporary nature, the following analysis has been made covering the period from April 1911 to and including March 1915:

TABLE VI.

Operating Statistics Southern Counties Gas Company of California. (City of Orange.)

Year	July 1st, number consumers	Increase or decrease	Gas sold, thousand cubic feet	Increase or decrease	Revenue	Increase or decrease
1911 (9 months)	397	----------	4,455	----------	$6,299 95	----------
1912	454	14.36%	9,932	†*+68.07%	11,978 77	†*+46.68%
1913	528	16.30%	11,826	+19.06%	14,165 48	+18.16%
1914	693	31.25%	10,767	— 8.70%	10,481 21	—26.01%
1915 (3 months)	826	*35.18%	5,179	+51.21%	3,308 62	—20.34%

*Increase or decrease compared with same period of previous year.
†Estimated.

The above tabulation shows the general effect of the substitution of natural for artificial gas in May 1914, and indicates a material improvement during the first three months of 1915. Table VI also shows a remarkable increase in the number of consumers served by petitioner following the introduction of natural gas and the reduction of rates, which two factors, a higher grade product and a lower price, combined to make the use of gas more popular.

The effect of natural gas at lower rates upon the gross revenue received by petitioner from the city of Orange, each month since natural gas was substituted for the artificial product, as compared with the same period for the year previous is shown in the following tabulation:

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TABLE VII.

Gross Revenue From Sale of Gas in Orange.

(Eleven months ending March 31, 1915, compared with the same period ending March 31, 1914.)

Month	1913	1914	Decrease
May	$1,166 55	$543 00	53.5%
June	1,179 50	517 04	56.2%
July	1,047 97	537 30	48.7%
August	1,007 53	556 10	44.8%
September	1,150 61	625 08	45.7%
October	1,302 72	638 56	51.0%
November	1,502 08	724 47	51.8%
December	1,296 46	838 50	35.4%
	1914	1915	
January	$1,588 42	$1,080 83	32.0%
February	1,246 27	1,094 08	12.2%
March	1,312 38	1,228 71	14.0%

The comparison made in Table VII shows that the maximum decrease in revenue, amounting to 56.2 per cent, occurred during the second month following the introduction of natural gas, and that this condition continued with slight improvement for five months thereafter, after which period the earnings rapidly increased until at the end of eleven months the gross revenue was only 14 per cent less than it had been the year before. Even more significant is the information obtained by comparing the average consumption per consumer in Orange for the month of maximum decrease in gross revenue with that for the month of minimum decrease in revenue shown in Table VII. This comparison discloses the fact that in June 1913, the average consumption per consumer was 1,855 cubic feet, while in June 1914, the average was only 946 cubic feet; a decrease of 49 per cent. However, in February 1914, the average consumption of gas was 1,678 cubic feet, as compared with 1,744 cubic feet in February 1915: a net increase of 3.9 per cent.

The above comparisons deal only with conditions in the city of Orange, which are not typical of the conditions over the entire Orange County district served by petitioner. An excellent comparison between conditions prevailing over all territory served from petitioner's Orange County system when artificial gas only was being supplied, and the conditions existing eleven months after the introduction of natural gas, is obtained in the following table, using the month of March as a basis:

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TABLE VIII.

Comparison of Operating Statistics for the Month of March 1914 and 1915. Orange County.

	1914	1915
Gas sold, cubic feet	8,617,600	19,766,800
Gross revenue	$8,901 24	$9,277 26
Meters in service	4,489	5,763
Average consumption per meter, cubic feet	1,919	3,430
Average revenue per meter	$1 98	$1 61
Average revenue per 1,000 cubic feet	1 03	47

After a careful consideration of all the circumstances connected with this application, I am convinced that sufficient time has not elapsed to determine with a reasonable degree of certainty whether or not the rates voluntarily established by petitioner in the city of Orange and other communities in Orange County will yield a reasonable return upon the investment of petitioner used and useful in connection with the distribution of natural gas in that territory. While the efforts of petitioner, which have resulted in giving the inhabitants of Orange County a better service at lower cost, are to be commended, and while the Commission will not hesitate to readjust the present rates if it is found that after a fair trial the revenue to be derived is inadequate, I desire to call attention again to the fact that the present rates were voluntarily established by petitioner apparently after a careful investigation of conditions existing in the entire terriory to be served by it in Orange County. If it should develop later that after a fair trial the present rates are inadequate and petitioner should desire to again bring the matter to the attention of this Commission, the Commission will at such time carefully consider the entire problem, including any losses which petitioner may have theretofore sustained by reason of the introduction of natural gas and the reductions of its rates, with a view to determining what, if any, modifications should be made in the rates then in effect to enable petitioner to profitably continue its business in Orange County. However, for the reasons hereinbefore stated, this Commission can not be expected, after only a few months' operation under the present rates, to grant an increase in one particular community upon the showing that for such a period the rates, as applicable to that locality, may not have yielded the anticipated revenue. There is another and very important phase of the problem which merits careful consideration, both by petitioner and by this Commission, which has to do with the consumers of gas in the city of Orange and in other communities. Apparently, relying upon petitioner's ability to grant and willingness to continue the rates established

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for natural gas, a relatively large number of persons have purchased appliances and made other material expenditures incidental to obtaining gas service. These consumers, individually, are entitled to feel that their contracts for service will receive the same consideration and entitle them to the same degree of protection as would the contracts with entire communities.

In view of all the facts now before the Commission, and for the reasons heretofore set forth, there remains no alternative other than to recommend that the application be denied without prejudice.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision,

It is hereby ordered that the above entitled application be and the same is hereby denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1915.

DECISION NO. 2459.

IN THE MATTER OF THE APPLICATION OF CITY AND COUNTY OF SAN FRANCISCO, BAY CITIES HOME TELEPHONE COMPANY AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER AND ASSIGNMENT OF A FRANCHISE, AND FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF SUCH FRANCHISE.

Application No. 1440.

Decided June 7, 1915.

Bay Cities Home Telephone Company, owning a franchise permitting the construction and operation of a telephone system in the city and county of San Francisco, which was originally granted to the Home Telephone Company of San Francisco, applies jointly with The Pacific Telephone and Telegraph Company for permission to transfer such franchise to the latter company.

Prior to the effective date of the Public Utilities Act the physical property of the Bay Cities Home Telephone Company had been transferred, through another company, to the Pacific Company, which transfer, the city of San Francisco attempted, through the courts, to annul, depending upon a restrictive clause in the franchise forbidding its transfer. The suit being decided in favor of the telephone company, was appealed to the Supreme Court. Subsequently the city and the Pacific Company came to an agreement as to conditions under

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which the Pacific Company should take over and operate under such franchise. The board of supervisors passed a resolution permitting such transfer, which resolution was approved by the mayor, and as no good reason appears why this Commission should not permit the consummation of plans agreed upon by all parties in interest: *Held*, Application granted.

Commissioner Edgerton dissenting from the opinion of the majority of the Commissioners: That it is well known and admitted by all parties herein that the franchise proposed to be transferred was obtained through corruption, that for this Commission to sanction its transfer and the exercise of rights and privileges thereunder would be in a manner encouraging such practices and is against public interest. That the 2 per cent of gross receipts accruing to the city under provisions of the latter franchise is not of sufficient benefit, considering that this amount must necessarily be allowed in fixing rates, to warrant this Commission in sanctioning this transfer and that it should show its disapproval of franchises of this nature by denying the present application.

Thomas, Boody & Lanagan, for Bay Cities Home Telephone Company.

Pillsbury, Madison & Sutro, for The Pacific Telephone and Telegraph Company.

Percy V. Long, city attorney, for City and County of San Francisco.

Daniel O'Connell, in propria persona.

REPORT OF THE COMMISSION.

This is an application by Bay Cities Home Telephone Company for an order authorizing the transfer to The Pacific Telephone and Telegraph Company of a franchise granted on October 3, 1906, by Ordinance No. 75 (New Series), of the city and county of San Francisco, and of The Pacific Telephone and Telegraph Company for a certificate declaring that the public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of said franchise.

Ordinance No. 75 (New Series), of the city and county of San Francisco grants to Home Telephone Company of San Francisco a franchise to construct, maintain and operate a telephone system in the city and county of San Francisco and to construct, maintain and operate poles, cables, underground conduits and other appliances through, along and under and in the public streets, alleys and highways of the city and county of San Francisco for the purpose of transmitting sound, signals and conversation by means of electricity or otherwise. The term of the franchise is fifty years. The franchise is granted on the following conditions:

1. That the telephone system to be constructed under the franchise be constructed, maintained and operated in accordance with the applicable provisions of the statutes of California and of the charter and ordinances of the city and county of San Francisco.

2. That work under the franchise shall commence within four months, and that thereafter two million dollars shall be expended in construction work within twelve months after the commencement of work,

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three million dollars within twenty-four months and four million dollars within thirty-six months, and that the work shall be completed within three years after its commencement.

3. That 600 free telephones shall be supplied to the city and county of San Francisco, and that the same will be kept in good repair and working order during the term of the franchise without expense to the city and county of San Francisco, and that the city and county of San Francisco shall, during the life of the franchise, have the use, without expense to the city and county of San Francisco, of two continuous ducts throughout the entire length of all conduits laid by the company, or its assigns or successors, for the exclusive use of the fire alarm, fire patrol, police alarm and department of electricity service.

4. That the grantee of the franchise, its successors and assigns, shall pay to the city and county of San Francisco, as provided by the Broughton Act, for the first five years, 2 per cent each year of the gross receipts from the exercise of the franchise rights.

We desire to draw particular attention to the fifth condition, reading as follows:

> "That said grantee, his or its successors or assigns shall not without the consent of the city and county of San Francisco, evidenced by ordinance duly passed by the board of supervisors thereof, sell or transfer its property or any of the rights or privileges authorized or granted by said franchise to any person, company, combination, trust or corporation now engaged in the telephone business in the city and county of San Francisco and shall not at any time enter into any agreements directly or indirectly with any persons, company, combination, trust or corporation now engaged in the telephone business in the city and county of San Francisco, concerning the rates to be charged for telephone service in the city and county of San Francisco."

Then follow certain provisos which it is not necessary here to consider.

Home Telephone Company of San Francisco filed with the board of supervisors of the city and county of San Francisco a bond in the penal sum of $250,000.00, to secure the due performance of the terms and conditions of the franchise awarded to it. On July 1, 1910, Home Telephone Company of San Francisco conveyed to Bay Cities Home Telephone Company, one of the applicants herein, all its property, including the franchise granted by said Ordinance No. 75 (New Series). Bay Cities Home Telephone Company immediately entered into possession of the property and proceeded to operate the same and to exercise the franchise rights theretofore granted under said ordinance to Home Telephone Company of San Francisco.

On March 15, 1912, Bay Cities Home Telephone Company, under an arrangement with The Pacific Telephone and Telegraph Company,

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executed a conveyance to Home Long Distance Telephone Company of all its property except the franchise. On the same day, Home Long Distance Telephone Company executed a conveyance to The Pacific Telephone and Telegraph Company of all the property acquired by it from Bay Cities Home Telephone Company. The Pacific Telephone and Telegraph Company immediately entered into possession of the property described by these conveyances, and ever since March 15, 1912, has been in possession thereof, operating certain portions thereof as a part of its own telephone system in the city and county of San Francisco. Since March 15, 1912, the franchise granted by said Ordinance No. 75 (New Series), has not been exercised. It is now proposed to have the franchise follow the property which was formerly operated thereunder, into the hands of The Pacific Telephone and Telegraph Company.

After the transfer of the property by Bay Cities Home Telephone Company, through Home Long Distance Telephone Company, to The Pacific Telephone and Telegraph Company, the city and county of San Francisco brought an action in the Superior Court of the State of California in and for the city and county of San Francisco, against The Pacific Telephone and Telegraph Company and others, to have the transfer of the property set aside. The case was heard by Judge John F. Ellison, of Tehama County, sitting in San Francisco. In the course of his opinion, a copy whereof was introduced in evidence in this proceeding, Judge Ellison concluded that the provision in Ordinance No. 75 (New Series), purporting to forbid a transfer of telephone properties from the grantee of the franchise, its successors or assigns, to any other telephone company engaged in the telephone business in the city and county of San Francisco at the time the franchise was granted, was void in that it undertook to deprive the grantee, its successors and assigns, of the right granted by sections 361*a* and 540 of the Civil Code of this State to sell the property of the corporation, except the corporate franchise, with the consent of persons holding two-thirds of the issued stock of the corporation. In conclusion, Judge Ellison said:

> "I find nothing in the provisions of the charter of the city and county of San Francisco that either expressly or by inference confers upon the city the power to place in the franchise the provision that the grantee thereof should not sell or dispose of its property. No law of this state conferred such power and the condition is clearly against the policy of the state as expressed in its statutes granting to telephone companies the power to sell their property."

Thereafter, the city and county of San Francisco perfected its appeal from Judge Ellison's decision to the Supreme Court of this State, where the case is now pending.

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The Pacific Telephone and Telegraph Company is now operating in San Francisco under a 50-year franchise granted by the board of supervisors of San Francisco on March 24, 1890. This franchise was granted before the Broughton Act was enacted, and under its terms The Pacific Telephone and Telegraph Company is under no obligation to pay to city and county of San Francisco any portion of its gross annual revenues. The city of San Francisco is given the right to use one continuous duct through the entire length of the conduits laid by the company, for the exclusive use of the fire alarm, fire patrol and police alarm service.

By a supplemental ordinance, The Pacific Telephone and Telegraph Company is obligated to supply to the city and county of San Francisco 600 free telephones.

After the transfers of property hereinbefore referred to and the litigation ensuing thereon, the parties finally agreed upon a compromise settlement, the terms whereof are contained in Ordinance No. 3018 (New Series), adopted by the board of supervisors of the city and county of San Francisco on November 23, 1914. Sixteen supervisors voted in favor thereof, one supervisor voted against the ordinance and one supervisor was absent. By this ordinance, the city and county of of San Francisco consents to and ratifies the sale and transfer by Bay Cities Home Telephone Company of all its physical and tangible properties to Home Long Distance Telephone Company, and the sale and transfer by Home Long Distance Telephone Company of said physical and tangible properties to The Pacific Telephone and Telegraph Company. The city also consents to the transfer by Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company, of the franchise granted to Home Telephone Company by Ordinance No. 75 (New Series), hereinbefore referred to. The city's consent and ratification is given on certain conditions, including the following:

1. The instrument conveying the franchise is to be filed in the office of the clerk of the board of supervisors of San Francisco within 60 days after the sale and transfer are approved by the Railroad Commission.

2. Within 60 days after the approval by the Railroad Commission, The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco its duly executed agreement to pay to the city and county of San Francisco in the manner provided by said Ordinance No. 75 (New Series), 2 per cent of that proportion of its gross toll receipts creditable to the San Francisco exchange, and accruing from telephones within the city and county of San Francisco from and after December 1, 1914.

3. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco, within 60 days after approval of the sale and transfer by the

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Railroad Commission, a bond in the sum of $250,000.00, to insure the fulfillment of each and every term of the franchise to be assigned to The Pacific Telephone and Telegraph Company.

4. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of the city and county of San Francisco, within 60 days after the approval of the sale and transfer by the Railroad Commission, an agreement that it will furnish to the city and county of San Francisco certain telephone service, including not to exceed 1,000 free telephones and the use through each street in which underground conduits are constructed or maintained, of two continuous ducts in which the city and county of San Francisco may install and maintain wires and cables for low voltage electric circuits.

5. The Pacific Telephone and Telegraph Company is to file with the clerk of the board of supervisors of San Francisco, within 65 days after the approval of the Railroad Commission, an instrument duly executed, surrendering and abandoning to the city and county of San Francisco the franchise granted to its predecessor, Pacific Telephone and Telegraph Company, by Ordinance No. 2186 on March 24, 1890.

6. The Pacific Telephone and Telegraph Company is to agree that the consent and ratification given by the ordinance shall in nowise be deemed a waiver or abridgement of the rights and powers of the city and county of San Francisco—

(*a*) To acquire at any time the physical properties and franchises of The Pacific Telephone and Telegraph Company located in San Francisco, by voluntary purchase or by proceedings in condemnation;

(*b*) To grant at any time a telephone franchise to any competing company; or,

(*c*) To establish, construct and operate a competing municipally owned telephone system.

The ordinance further provides that upon compliance with all its conditions, the principals and sureties on the bond for $250,000.00 filed with the board of supervisors by Home Telephone Company of San Francisco on the passage of Ordinance No. 75 (New Series), shall be discharged and the appeal now pending in the Supreme Court from Judge Ellison's decision shall be dismissed as fully satisfied. The ordinance further provides that upon compliance with all its conditions, the city attorney of the city and county of San Francisco shall request the attorney general of California to dismiss an action brought in the name of the people of the State against The Pacific Telephone and Telegraph Company and tried at the same time as the action brought by the city and county of San Francisco.

The mayor of the city and county of San Francisco approved Ordinance No. 3018 (New Series), only after The Pacific Telephone and Telegraph Company entered into an agreement with the city and

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county of San Francisco, dated December 4, 1914, agreeing, in consideration of the city's consent being granted by ordinance,

> "that in the event of the purchase hereafter by the city and county of San Francisco, through condemnation proceedings or otherwise, of the physical properties and franchises of said Pacific Telephone and Telegraph Company within the city and county of San Francisco, no consideration whatever shall be paid for said franchises or any of them, and no franchise value shall, in any event, be allowed to said Pacific Telephone and Telegraph Company, its successors or assigns, for said franchises, or any of them."

The Pacific Telephone and Telegraph Company also agreed that it would exercise the franchise under and in compliance with all laws and ordinances now or hereafter in force with reference to the placing of electric wires and conductors underground in the city and county of San Francisco, and all laws and ordinances relating to or regulating the placing, erection, use and maintenance of poles and wires in the city and county of San Francisco. It was further agreed that the agreement thus entered into should be made a part of any order which the Railroad Commission might thereafter make in the premises.

No referendum was invoked against Ordinance No. 3018 (New Series), and the ordinance became effective within the time prescribed by the city charter of San Francisco.

During the hearing of this application a protest was made and the Commission's attention was drawn to the results of an election held March 29, 1912. At this election 21,168 votes were cast in favor of and 10,463 votes against a proposition worded on the ballot as follows:

> "An ordinance determining and declaring that the public interest and necessity require the acquisition, construction, completion, and equipment of a public utility, a telephone system, by the city and county of San Francisco; that the cost thereof, in addition to the other expenses of the city and county, will exceed the income and revenue provided for the said city and county for any one year; and directing the board of public works to procure through the city engineer and to place on file with the board of supervisors, plans and estimates of the cost of original construction, completion and equipment of such public utility; and determining and declaring that the public interest and necessity require the acquisition by said city and county of San Francisco, of the telephone system of the Bay Cities Home Telephone Company, in said city and county of San Francisco; and determining and declaring that public interest and necessity require that any merger of the telephone systems of the said Bay Cities Home Telephone Company, and of The Pacific Telephone and Telegraph Company, be disapproved, rejected and defeated, and that said Bay Cities Home Telephone Company be not released from any of its contracts or other obligations to said city and county."

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At the same election 20,492 votes were cast in favor of and 10,759 votes against a proposition worded on the ballot as follows:

> "An ordinance calling and providing for a special election to be held in the city and county of San Francisco on the day to be set by the board of election commissioners, in conformity with chapter III, of article XI, of the charter of the city and county of San Francisco, for the purpose of submitting to the voters of said city and county a proposition, to wit:
>
> "'A proposition to incur a bonded debt of the said city and county of San Francisco to the amount of $6,000,000.00 for the acquisition by said city and county of San Francisco of an existing public utility, to wit: The telephone system, works and property of the Bay Cities Home Telephone Company, a corporation, to be owned and controlled by the city and county of San Francisco for supplying to said city and county and to the inhabitants thereof, a means of communication by telephone and telegraph between all the inhabitants of the said city and county of San Francisco.'"

The second named ordinance failed to receive the required two-thirds vote.

City Attorney Percy V. Long, in an opinion dated February 26, 1912, advised the board of supervisors of San Francisco that these ordinances are invalid. Mr. William Thomas, attorney for Bay Cities Home Telephone Company, contends in this proceeding, that, in view of the fact that the people did not approve the ordinance involving the issue of bonds, the first ordinance was thereby automatically rejected. Under the decision of Judge Ellison, it may further be urged that the ordinances are void, for the reason that they apparently attempt to stop a transfer of property which had already been consummated. It will be noted that neither of the ordinances make any mention of the franchise granted by Ordinance No. 75 (New Series).

Without passing on the question of the validity of these ordinances, it will be sufficient to draw attention to the fact that if the people of the city and county of San Francisco desire to acquire and operate the existing telephone system, the machinery for such action has been provided by the legislature of California, and the decision on this application will in no way interfere with such acquisition.

All parties to this proceeding concur in admitting that the franchise granted by Ordinance No. 75 (New Series), is a valid franchise. The question now before this Commission is whether there is any valid reason why the compromise agreement which has been entered into between the city and county of San Francisco, Bay Cities Home Telephone Company and The Pacific Telephone and Telegraph Company, as set forth in said Ordinance No. 3018 (New Series), should not be sanction by the Railroad Commission in so far as the Commission's consent is necessary.

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In this connection, certain matters referring to the action of the board of supervisors of the city and county of San Francisco in voting to advertise for bids for the franchise which was later granted by Ordinance No. 75 (New Series) were brought to this Commission's attention. These matters transpired some 9 years ago. The present board of supervisors of the city and county of San Francisco, with full knowledge of these matters, by a vote of 16 to 1, with one supervisor absent, have concluded that the best interests of the city and county of San Francisco require the consummation of the arrangement herein set forth, and the mayor has approved their judgment. On the facts of this case, we hesitate to substitute our judgment for theirs and to withhold our approval to the compromise arrangement which they, with much care and thought, have entered into.

We have given careful consideration to this application and are of the opinion that the Commission's consent to the transfer of the franchise and the certificate of public convenience and necessity should be granted as applied for, subject to the conditions specified in the order.

The Pacific Telephone and Telegraph Company claims to have acquired from Bay Cities Home Telephone Company, property of a value in excess of seven million dollars. A portion of this property has been discarded and other portions are idle, while only a part of the property thus acquired is being actually used by The Pacific Telephone and Telegraph Company in the conduct of its business. The order herein will contain a condition to the effect that The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a written agreement to the effect that the price at which this property was transferred shall not be taken before the Railroad Commission or any other public authority as representing the true value of the property.

The franchise is being transferred without the payment of consideration and The Pacific Telephone and Telegraph Company agrees that it will not urge the sum of $25,000.00 originally paid by Home Telephone Company of San Francisco as justifying any claim to a franchise value.

We are of the opinion that the application should be granted, subject to the conditions specified in the order.

ORDER.

City and county of San Francisco, Bay Cities Home Telephone Company and The Pacific Telephone and Telegraph Company having applied to the Railroad Commission for an order authorizing the transfer from Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company of the franchise granted to Home Telephone Company of San Francisco by Ordinance No. 75 (New Series), of the

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city and county of San Francisco, and for a certificate declaring that the public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of the rights granted by said ordinance, and a public hearing having been held on said application, and the application having been submitted and being now ready for decision,

It is hereby ordered that Bay Cities Home Telephone Company be and the same is hereby authorized to transfer and assign to The Pacific Telephone and Telegraph Company that certain franchise which was granted to Home Telephone Company of San Francisco by Ordinance No. 75 (New Series), of the city and county of San Francisco, but only on the conditions hereinafter stated; and,

The Railroad Commission hereby declares that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of the rights granted to Home Telephone Company of San Francisco by said Ordinance No. 75 (New Series), but only on the conditions hereinafter specified.

The foregoing order and declaration are made subject to the following express conditions:

1. Within sixty days from the date of the order herein, The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a certified copy of each and every document to be filed by said company with the clerk of the board of supervisors of the city and county of San Francisco, as provided by said Ordinance No. 3018 (New Series), in full compliance by The Pacific Telephone and Telegraph Company with the provisions of said ordinance.

2. Within sixty days from the date of this order, The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a stipulation executed on behalf of said company by its officers thereunto duly authorized by a resolution of its board of directors, agreeing as following:

(*a*) That the price heretofore paid for the physical properties of Bay Cities Home Telephone Company in the city and county of San Francisco shall not be taken before the Railroad Commission or any other public authority as representing for rate making or any other purpose the real value of the property.

(*b*) That neither The Pacific Telephone and Telegraph Company nor any successor or assign will ever claim in any proceeding before the Railroad Commission or any other public authority any compensation or value for the franchise granted to Home Telephone Company of San Francisco by said Ordinance No. 75 (New Series).

3. That The Pacific Telephone and Telegraph Company will at all times, during the life of said franchise, exercise the same in compliance with all laws and ordinances now in force or that may hereafter be

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adopted, providing for the placing of electric wires and conductors underground in the city and county of San Francisco, and all laws and ordinances relating to the placing, erection, use and maintenance of poles and wires in said city and county of San Francisco.

4. The Railroad Commission hereby reserves the right to revoke this order if The Pacific Telephone and Telegraph Company fails to comply with any of the provisions of its settlement with the city and county of San Francisco, as set forth in said Ordinance No. 3018 (New Series), and in the agreement dated December 4, 1914, between The Pacific Telephone and Telegraph Company and city and county of San Francisco.

Dated at San Francisco, California, this 7th day of June, 1915.

MAX THELEN,
H. D. LOVELAND,
ALEX GORDON,
FRANK R. DEVLIN,
Commissioners.

I dissent from the action taken by my associate Commissioners in granting this application.

It is admitted that the majority of the supervisors who granted this franchise in 1906 were bribed to take favorable action thereon. In fact, a majority of the supervisors confessed before the grand jury to the acceptance of such bribe for such purpose.

Applicants urge that no consideration should be given by this Commission to corruption in the granting of this franchise because it has been held by our highest courts that a franchise is not invalidated by reason of the bribing of public officials to make the grant.

I readily concede that this is the position of our courts and that, therefore, this franchise may, for the purpose of this proceeding, be determined to be valid. It is true that in view of the decision of the courts the city would be bound to recognize this franchise, even though it was obtained through bribery. I do not concede, however, that the function of this Commission in passing upon franchises is the determination of their legality.

The Public Utilities Act, section 50 (*b*), provides:

> "No public utility of a class specified in subsection (*a*) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege."

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Also it is provided in section 51 (*a*):

> "No * * * telephone corporation * * * shall henceforth sell, lease, assign, mortgage or otherwise dispose of * * * any franchise or permit or any right thereunder * * * without having first secured from the Commission an order authorizing it so to do * * *"

It will be noted that under the section of the Public Utilities Act first quoted, public convenience and necessity is made the sole basis of the Commission's judgment as to the issuance of an order authorizing the exercise of rights and privileges under a franchise and that under the portion of the last section just above quoted, no basis at all is laid down upon which the Commission should issue an order authorizing the transfer of a franchise belonging to a public utility corporation.

It is clear that it was the intention of the legislature to empower the Commission to consider matters beyond and above the mere legality of a franchise, for the courts have been and now are the tribunals to determine this matter, and if the Commission gave an opinion or an order attempting to determine the validity of a franchise its conclusion would not be final or binding as against the conclusion of the courts.

Obviously, therefore, upon an application of this kind the Commission is called upon to take the broadest possible view of the matter and determine whether, everything considered, public convenience will be best served by permitting the exercise of rights and privileges under a franchise. Therefore, this Commission, if it authorizes the transfer of this franchise and the exercise of rights conferred therein, must declare that public convenience and necessity will be best served by the exercise of rights under a franchise which was fraudulently granted by the official representatives of the very public whose needs we are considering.

I hold that it is against public interest to sanction a franchise which is tainted in its inception with official corruption.

The history of franchise grants in America has been black enough. It has happened repeatedly that corporations obtaining franchise privileges through bribery and fraud have been sustained in their possession. They have been allowed to retain the benefit of their own wrongdoing.

I firmly believe that the main value of the provision of the Public Utilities Act which gives this Commission the power to grant or withhold certificates of public convenience and necessity lies in the check which it gives the State upon municipal franchise grants. I do not urge that by denial of this application official corruption would be prevented, but I do insist that it would, at least, largely do away with the incentive for corruption.

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And I further believe that the State should take this, its first opportunity, to declare its unwillingness to place the stamp of approval upon a franchise known to have been obtained through bribery.

It is true, as urged by applicants, that the city of San Francisco would obtain a considerable sum of money in the aggregate if this application were granted because of the provision that it shall receive 2 per cent of the gross income of The Pacific Telephone and Telegraph Company obtained in San Francisco, but it must be remembered that every dollar represented by this 2 per cent must come from the pockets of the patrons of the telephone company because any rate-fixing body must allow this 2 per cent as an operating expense of the company. Hence this 2 per cent would not come from the corporation, finally, but from the people. Nor are we here confronted with a condition where the telephone service in San Francisco will be affected by a decision in this matter. The Home Company has long ceased doing business and The Pacific Company is now operating in San Francisco and will continue to operate if this application were not granted.

Dated at San Francisco, California, this 7th day of June, 1915.

EDWIN O. EDGERTON,
Commissioner.

DECISION No. 2460.

F. O. SIRARD

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 544.

Decided June 7, 1915.

Complainant attacks the rates and service of defendant for gas in the city of San Rafael and also complains of the quality of gas served and a valuation of defendant's properties serving this district and a review of its operations showing that the present rate of $1.50 per 1,000 cubic feet for first 5,000, $1.00 per 1,000 cubic feet for next 5,000, and 80 cents per 1,000 cubic feet for all over 10,000 per month, with a minimum monthly bill of 50 cents, is not unjust nor exorbitant and that though defendant has had trouble with its gas purifiers this matter has been remedied and service being up to the standard for gas plants of this nature. Complaint dismissed.

Edwin I. Butler, for Complainant.

Chas. P. Cutten, for Defendant.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

The complaint in this case is directed against the rates charged by the Pacific Gas and Electric Company for artificial gas manufactured and sold by it in the city of San Rafael, Marin County, which rates complainant alleges are excessive and unreasonable. Complainant further alleges that the gas supplied by defendant in San Rafael is of poor and inferior quality and that it is not adequately served. The Commission is asked to fix rates at which gas shall be sold by defendant and to make such order regarding the service as may be just in the premises.

Defendant's answer to the complaint denies that its rates for gas supplied to the inhabitants of San Rafael are unreasonable or excessive and further denies that said gas is of poor or inferior quality or that it is inadequately served. Defendant asks that the complaint be dismissed.

The present rates charged by defendant for artificial gas supplied by it in the city of San Rafael and neighboring towns are as follows:

TABLE I.

Gas Rates.

For the first 5,000 cubic feet per month, $1.50 per 1,000 cubic feet.
For the next 5,000 cubic feet per month, $1.00 per 1,000 cubic feet.
For all over 10,000 cubic feet per month, $0.80 per 1,000 cubic feet.
Minimum, 50 cents per month per meter.

The system under consideration consists of a crude oil gas generating plant located in the city of San Rafael, low pressure gas distribuiton systems serving San Rafael and San Quentin, a high pressure transmission line from San Rafael to San Quentin and high pressure distribution systems serving the towns of San Anselmo, Fairfax, Ross, Kentfield, Larkspur and intervening territory. The defendant maintains an electric distribution system serving the same territory.

At the hearing it was agreed between the complainant, who represented the city of San Rafael, and the defendant that the entire gas system served by the San Rafael gas plant should be considered as a unit in determining the rates. In the following discussion the system has therefore been considered as a unit.

Two valuations were submitted in evidence—one by the company and one by Mr. Hammond of the Commission's engineering department. The first was based on the J. G. White valuation of December 31, 1911, plus additions and betterments to December 31, 1913. The second was based on a detailed inventory and appraisal as of June 30, 1914, made by Mr. Hammond. The detailed differences in the two valuations are not readily determined, but the summary as follows shows a difference of $29,378.46 in the gas property valuations, the larger part

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of which is apparently due to the difference in overhead percentages used, the "White" valuation including 25 per cent while the other includes about 15 per cent overhead.

TABLE II.

Comparison of Cost of Reproduction Estimates.

Property	Estimated reproduction cost new January 1, 1914 (P. G. & E. Co.)	Estimated reproduction cost new June 30, 1914 (Hammond)
Landed capital	$6,615 00	$6,615 00
Production	[1]118,014 54	112,200 21
Transmission and distribution	208,925 34	185,361 21
Totals	$333,554 88	$304,176 42
General capital	[2]5,256 63	13,931 36
Working capital	33,498 99	[3]10,527 87
Totals	$372,310 50	$328,635 65

[1]$8,069.26 transferred from transmission to production to make figures comparable.
[2]Local general capital chargeable to gas.
[3]Local working capital plus material and supplies.

Mr. Hammond's value of general capital apparently includes certain items which defendant has included in production and distribution capital and therefore these items are not directly comparable. Under his estimate of working capital has been included the local material and supplies and working capital estimated as two months' operating expenses. The defendant's estimate of working capital appears excessive and not justified. It is approximately equal to 50 per cent of the annual revenue from the district.

From evidence submitted it appears that the gross revenue from the sale of gas for the past year was $67,856.81. The total sales for the same period were 48,754,100 cubic feet of gas or an average rate of $1.39 per 1,000 cubic feet.

An estimate of the cost of gas for the year 1915 was submitted by Mr. Hoar, gas and electrical engineer for the Commission. This estimate, which was based on the valuation by Mr. Hammond, increased for all department capital and construction and on the operating expenses as submitted by the company corrected for increased output and assumed changes in operation, shows that the total estimated cost, including return on investment, is $80,176.88 for the year 1915. The average cost per 1,000 cubic feet sold under this estimate is $1.41, from which it appears that the rates charged by the defendant company are not excessive or unreasonable.

The defendant contended that the estimate of cost was low and introduced testimony to show that the depreciation rate used was lower

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than should be allowed for this territory due to the local conditions of soil. Investigation made by Mr. Hoar shows that the operating and maintenance expense in this district are apparently excessive as compared with the average of the defendant's system. This is especially true regarding the commercial and distribution expense which is 2½ times the average. A higher than average expense would be expected due to the scattered territory served and the large percentage of summer or short seasoned consumers but it hardly seems that as large a difference should occur.

The evidence submitted by defendant shows that during the past seven years this gas department has not earned a net return of 8 per cent after deduction of the company's estimate of depreciation, obsolescence and other reserve charges. In fact the defendant's computations would show that on this gas system it has suffered a deficit during the past seven years, that is, the district has not even earned the depreciation allowance estimated by the defendant.

With regard to the question of the quality and adequacy of the gas service in San Rafael it appears that during the latter months of 1913 the defendant had considerable difficulty in operating its gas purifiers and as a result the quality of gas was not up to the standard. From evidence and from investigation by the Commission's engineer, it appears that at present the quality of the gas and the adequacy of supply is at least equal to the average in California.

In view of all the evidence, I find that the city of San Rafael has at this time no just grounds for complaint, either as to rates charged by defendant for gas or as to the quality of the gas or adequacy of the supply and I therefore recommend that the complaint be dismissed.

I submit herewith the following form of order:

ORDER.

Public hearing having been held in the above entitled case and the same having been submitted and being now ready for decision,

It is hereby ordered that the complaint in the above entitled proceeding be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1915.

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Decision No. 2461.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF EIGHT THOUSAND DOLLARS AND COMMON CAPITAL STOCK OF THE PAR VALUE OF EIGHT THOUSAND EIGHT HUNDRED DOLLARS, PROCEEDS THEREOF TO BE USED FOR ADDITIONS TO PLANT AND DISTRIBUTING SYSTEM.

Application No. 1427.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF BONDS OF THE FACE VALUE OF SIX THOUSAND DOLLARS AND COMMON CAPITAL STOCK OF THE PAR VALUE OF THREE THOUSAND TWO HUNDRED FIFTY DOLLARS FOR CERTAIN SPECIFIED PURPOSES.

Application No. 1520.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY FOR AUTHORITY TO ISSUE BONDS OF THE FACE VALUE OF TWENTY-SIX THOUSAND DOLLARS AND COMMON CAPITAL STOCK OF THE PAR VALUE OF FOURTEEN THOUSAND FIVE HUNDRED DOLLARS, OR IN LIEU THEREOF SAID COMPANY MAY ISSUE AT ITS OPTION ITS PREFERRED STOCK OF THE PAR VALUE OF FORTY-THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS.

Application No. 1543.

Decided June 7, 1915.

Applicant, operating gas distributing and generating systems in a number of towns in Tulare County, has heretofore at various intervals obtained permission from this Commission to issue stock and bonds and now applies under three separate applications for permission to issue a total of $40,000.00 face value of bonds and $26,550.00 par value of stock. Investigations in connection with such applications revealing certain irregularities in the conduct of its business, a thorough investigation into the affairs of applicant was recommended and made, disclosing the following facts:

That applicant has reported as having received from securities authorized $367,778.00 in cash and $47,349.00 in property which amount is reported as having been expended for plant and it also claims to have expended $17,429.74 from earnings though an appraisement of its properties fail to reveal a value anywhere near such sum. That certain property reported to have been purchased for the sum of $19,904.48 can not be found, also that construction work has been done on applicant's system by a construction company controlled by applicant's president, the cost of such work to applicant being considerably in excess of its real value, the construction company receiving a profit of 46.6 per cent. That applicant's books have been manipulated to the end that though it has paid dividends on its stock and claims a surplus of $611.19, an investigation shows a deficit of $14,753.41.

Held, That to authorize the securities herein applied for would be merely sanctioning illegal financial practices: Application denied and applicant directed to take immediate steps to restore amounts improperly paid out in dividends and other sums not accounted for after which consideration will be given to the securing of funds for extensions and betterments.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

There are here under consideration three applications by Central California Gas Company. Under Application No. 1427 an order has heretofore been made granting a part of this application. This application, together with Application No. 1520 and Application No. 1543, was set down for hearing subsequently and it now becomes necessary to finally consider and pass upon all three of these applications.

In Application No. 1427 authorization was sought to issue $8,000.00 first mortgage bonds and $8,800.00 par value of stock. Under this application an order was made authorizing the issue of $8,000.00 first mortgage bonds. The rest of the application for the issuance of stock was held in abeyance pending a further investigation due to certain irregularities disclosed in the financial methods employed by the applicant.

The last mentioned order was made December 15, 1914, and immediately thereafter the stock and bond department, the auditing department and the engineering department recommended, in view of the discovery of these irregularities, that a complete investigation be made of the affairs of this company and such investigation has been continuing ever since.

In Application No. 1520 authorization is sought to issue bonds in the face value of $6,000.00 and common stock of the par value of $3,250.00. Under Application No. 1543 authorization is sought to issue bonds of the face value of $26,000.00 and 145 shares of common stock of the par value of $14,500.00, or in lieu of the above, authorization to issue preferred stock of a par value of $43,750.00.

From time to time, at intervals, applicant has received from this Commission authorization to issue stocks and bonds. Under the orders of this Commission, and beginning with the purchase of existing and operating plants at Porterville and Visalia, this company has built up a gas generating and distributing system in Tulare County of considerable extent.

At the hearing herein, the engineers of this Commission presented an estimate of reproducing new the physical elements of property based upon all of the information then obtainable, which estimate was very materially less than the amount claimed by the president of applicant to have been spent in acquiring and constructing the property.

Because of this marked discrepancy, and for the further reason that the auditing department of the Commission had called attention to the condition of the accounts of applicant's books and to several

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apparently dubious transactions engaged in by the president of this company with relation to its finances, it was determined to make a complete investigation of the properties of applicant and of all of its accounts.

This careful and painstaking investigation is now completed. It has consumed several months' time of a number of the Commission's experts and has necessarily delayed a determination of the applications herein.

Of course, the Commission was in no wise bound to make this exhaustive investigation as the burden of making sufficient showing to justify the issuance of the securities asked for, was upon applicant. However, it was determined to make a thorough investigation so that no injustice would be done this corporation, its stockholders or patrons.

The investigation of the engineers and of the auditor of this Commission has been made first to determine from applicant's own books of account and data the actual cost of its properties and the condition of its finances. In addition, and separately, the engineers have produced a careful estimate of what it would cost to reproduce this plant new, taking the Porterville and Visalia plants at the cost set up in applicant's books, and deducting therefrom the property listed as being acquired with said plants and which the Commission's engineers, after a most careful investigation, have been unable to find.

On the first branch of this investigation the engineers have considered every voucher, numbering several thousand, with the result that many irregularities are disclosed by the company's books.

Applicant was authorized in the various orders of this Commission to sell or exchange for property, stocks and bonds to net a total of $367,778.00 cash and property of a reported value of $47,349.00 and this amount was reported under oath by Mr. Forney, president of applicant, to the Commission as having been received and expended for plant.

In addition to the above amount, applicant claims to have expended $17,429.74 for which its treasury has not been reimbursed by the sale of securities.

After a most careful investigation by our engineers they have been unable to find parts of the Visalia and Porterville plant taken over complete, which parts, at the price alleged to have been paid, amount to $19,904.48, exclusive of property known to have been abandoned.

Mr. Forney, president of applicant, about the time of the organization of Central California Gas Company, applicant herein, organized a construction company called the "General Operating and Construction Company," either entirely or largely owned by himself. Under oath Mr. Forney stated to the Commission that he could produce plant

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for Central California Gas Company cheaper by having the Construction company construct this plant and turn it over to the Gas company. Under a contract with the Construction company the sum of $106,485.00 was paid by the Gas company to the Construction company for a portion of the transmission and distribution system.

On the 12th day of July, 1913, the Commission made an order in Application No. 606, and in the opinion preceding this order, the following statement is made:

> "It is evident that Mr. Forney has used his position in both of these companies to reap for the General Operating and Construction Company undue profit out of this work at the expense of the Central California Gas Company."

It was determined at that time that a profit of approximately $15,000.00 had been made by the Construction company out of work done for Central California Gas Company, but a more extended investigation has been made of the books of account, vouchers and data of the Construction company, with the result that it is shown that out of $106,485.00 the Construction company made a profit of $33,859.47, or, in other words, for a part of the transmission and distribution system, costing Mr. Forney, operating as the Construction company, $72,625.53, the Gas company, of which Mr. Forney is president, paid the Construction company a profit of $33,859.47, making a total cost to the Gas company of this property of $106,485.00. Either Mr. Forney grossly deceived this Commission in stating that he could operate cheaply through the Construction company, or he must justify the payment of a profit to himself of 46.6 per cent on the cost of the work. This cost of $72,625.53 is arrived at after allowing Mr. Forney or his Construction company the benefit of every doubt in the accounts as shown by his books and also includes an allowance to Mr. Forney of a salary of $350.00 a month and expenses of $150.00 a month for four months.

Mr. Forney's Construction company's books show a book entry of profit of $9,830.92. In a letter of the Commission dated January 24, 1914, Mr. Forney's attention was called to the fact that the books of his Construction company showed a large difference between the cost to it of the property contracted for by Central California Gas Company and the money paid therefor by the latter company, even allowing a profit of $9,830.92. Mr. Forney offered the explanation that a contract had been made between the Construction company and one W. H. Brown, by which Brown was to be paid the same compensation for constructing a part of the transmission line and distribution system as had been agreed to be paid by Central California Gas Company to the Construction company; that Brown had completed approximately one-half

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of this work when he fell ill and a settlement was made with him by the Construction company whereby he was paid $25,070.80; and that thereafter the Construction company completed the work of installing a part of the transmission line and distribution system, charging therefor the same price as was provided in the agreement with Central California Gas Company.

I can not accept this explanation of Mr. Forney because it is entirely unsupported by evidence. Furthermore, it appears from the books of his Construction company that payment was made by the Construction company to other parties for the identical work which Forney alleges was done by Brown and for which Forney claims to have paid Brown the $25,070.80 referred to above. Furthermore, there is no voucher nor receipt of any kind to support this alleged payment to Brown, nor is there any written evidence of a contract with Brown. Mr. Brown is dead, and notwithstanding the refusal of Mr. Forney to disclose to the employees of this Commission the whereabouts of his widow, after considerable effort she has been located and she states positively that Mr. Brown never received for his work for the operating company in excess of $1,500.00.

It appears that applicant has actually and properly expended for this part of the transmission main and distribution plant not in excess of $72,625.53 and if complaint is made by applicant on the score that this results in a loss to them of the difference between $106,485.00, which it paid to the Construction company for this property, and the $72,625.53 which is the maximum that this property cost, we can only suggest that it recover this money from the person who is responsible for its diversion.

The accounts of applicant are in such condition that it is impossible to determine with any accuracy what money was expended properly chargeable to plant or capital account, because the vouchers show total expenditures for a number of items, some of which are not properly capital items. Therefore, in order to arrive at a conclusion as to what this plant cost, it has been necessary to make a segregation and analysis of charges, separating the expenditures so as to distinguish between operating expenditures and capital expenditures. In the majority of instances even this was impossible and resort was had to an estimate from the vouchers obtainable of the cost of constructing portions of the plant. The engineers of this Commission allowed the full price paid for the Porterville and Visalia plants, but deducted from this price an amount representing property alleged to have been acquired with said plants as a part thereof which they were unable to find.

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The following table shows the results arrived at by our engineers with reference to construction work done by the Gas company itself as compared with the claims of the company:

	C. R. C.	Company	Difference
Material	$43,921 93	$50,530 34	$6,608 41
Labor	11,230 64	28,611 55	17,380 91
Material and labor	1,879 75	1,182 53	967 22
Sub-total	$57,032 32	$80,324 42	$23,292 10
Freight	$1,731 66	$1,785 05	$53 39
Hauling	177 39	1,093 82	916 43
Indirect charge and overhead	7,836 02	7,985 68	149 66
Questionable	----------	3,043 01	----------
Operation and appliances	----------	1,397 27	----------
Errors	----------	133 05	----------
Total	----------	----------	$28,984 91

That irregularities may easily arise in the conduct of the financial affairs of this corporation is apparent from the system which has been employed. Mr. Forney acts in the various capacities of president, engineer and auditor. Under this system Mr. Forney, as president, may authorize that a certain piece of work be done, as engineer he estimates the cost thereof, as president he approves his own estimate, and as auditor he approves the disbursements. In this way the financial authority is centered in one individual without the usual and proper check that ordinary business judgment would dictate.

A complete investigation by the auditor of this Commission of the accounts, vouchers and other data of applicant discloses that whereas applicant claims a surplus of $611.19 on December 31, 1914, in reality it had a deficit of $14,753.41.

A fictitious surplus has been built up as hereinafter specified in detail by concealing a certain amount of operating expenses which results in a false statement of surplus.

Dividends have been paid out regularly and it is probable that in order to get the cash in surplus out of which to pay these dividends, applicant has used moneys derived from the sale of stocks and bonds which the Commission had ordered to be used for capital purposes.

A portion of the request of these applications is that treasury be reimbursed for capital expenditures, but it is obvious that the real, but concealed, purpose is to obtain money in the treasury out of which to pay the operating expenses and to reimburse the company for the moneys paid out in dividends.

There are certain items of operating expense and interest applicable to the year 1914 which have been withheld and carried on the balance

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sheet submitted with the annual report for the year ending December 31, 1914, as assets under the caption "Due from Consumers and Agents." These items total $7,334.18. These items include such expenses as freight bills, salaries, traveling expenses, telephone bills and general current office expenses. These items are so clearly operating expenses that to charge them otherwise evidences a design to deceive.

There are certain additional items of operating expense amounting to $2,448.87 incurred during the year 1914 and applicable to that year but which were not entered upon the books until 1915. The result of this was that the operating expenses in 1914 were actually higher by $2,448.87 than shown on applicant's books. There is, of course, no excuse for this as the annual report for 1914 was not filed with this Commission until February 5, 1915, hence there was every opportunity to properly charge all operating expense for 1914.

Certain additional expense items amounting to $3,319.66 have been carried on the books as an asset under the caption of "Prepaid Development Expense." This is a proper operating charge and the failure to properly set it up adds to the apparent but fictitious surplus out of which dividends have been paid.

The further sum of $638.96 for gas consumed at the various offices of the company was carried on accounts receivable. Of course, this should not have been included as a part of the income.

There are other items which should be charged against surplus for the year 1914 and which have not been so charged. These items total $1,622.93.

It is very significant that almost the exact amount by which surplus has been improperly swelled is represented by the amount of $15,069.50 paid out in dividends in 1914.

It logically follows that the practices and methods here adopted would place the responsible officials of this corporation in the position of declaring dividends out of a deficit; of issuing bonds for operating expenses, contrary to the order of this Commission; and of obtaining bonds from the trustee through false representations of earnings.

For this Commission to authorize the securities here applied for as this matter has been presented, and in the light of the disclosures here revealed, would be for this Commission to sanction and to perpetuate these fraudulent financial practices. The Commission can not lawfully do so, nor would it in the exercise of its discretion be willing to do so. There is no provision in the statutes that empowers this body to authorize securities to reimburse a public utility for dividends illegally paid. There is, on the contrary, express prohibition against such practice.

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As this application can not be granted in view of the condition into which this utility has been brought, it will be necessary for me to recommend a denial. It is essential, however, that Central California Gas Company should continue to perform its proper public utility functions and for that reason steps should be taken as soon as possible to restore this corporation to a proper financial basis. In order to do this it will be necessary for those responsible for the conduct of this public utility's affairs to take steps to restore the moneys improperly paid out in dividends so as to eliminate the existing deficit. Proper steps should also be taken to secure an accounting as to the other sums to which attention has been called.

It is, of course, the desire of the Commission that the customers of the company be properly served and that necessary funds be obtained to install necessary additions and betterments from time to time to that end.

When the deficit has been made good, and proper adjustments have been made on the books of this utility, and satisfactory evidence has been submitted of such restoration and of such adjustments, or when this utility shall have submitted and received the approval of this Commission to plans for the restoration of its financial affairs to a proper basis, this utility may again apply to this Commission for such issue of stocks or bonds or other evidences of indebtedness as may be necessary to enable it to raise the funds to go forward with its public utility business.

During the course of this proceeding the applicant has submitted various other matters to this Commission, none of which require a ruling or other expression from this Commission.

Accordingly I recommend the following form of order:

ORDER.

Central California Gas Company having made applications to this Commission as recited in the foregoing opinion, and a hearing having been held and it appearing that for the reasons set out in the opinion preceding this order the applications should be denied,

It is hereby ordered that the applications herein be and the same are hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1915.

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Decision No. 2462.

IN THE MATTER OF THE APPLICATION OF E. TADLOCK, THE SOLE OWNER OF THE CITRONA WAREHOUSE, FOR AN ORDER FIXING WAREHOUSE RATES.

Application No. 1665.

Decided June 10, 1915.

Applicant operating a warehouse in the Sacramento Valley under a rate for the storage of grain of 50 cents per ton per season with an additional charge of 20 cents for loading out, applies for and in granted permission to establish a flat rate for the storage of grain of $1.00 per ton per season.

Charles W. Thomas, for Applicant.

Report of the Commission.

Loveland, *Commissioner.*

This is an application by E. Tadlock, sole owner of the property known as Citrona Warehouse, located in the heart of a farming district in the Sacramento Valley from which the whole of its business is drawn. The warehouse was originally built in the year 1877, but was blown down in 1903 and rebuilt the same year. The original building cost was estimated to have been $5,500.00. In the reconstruction there was a further expenditure of about $2,000.00, the largest item of which consisted of new lumber costing $1,500.00. The lot upon which the building is located is 100x700 feet and covers approximately 1.6 acres. This is estimated to have a value for warehouse purposes of at least $200.00 per acre. The lot is enclosed by 96 rods of board and wire fence, worth about 50 cents per rod. A wagon scale with the necessary scale house and equipment, together with a 40-foot well costing about $50.00, make up the items embracing all additional outlay.

By custom of long standing charges collected at this warehouse for the services rendered have been as follows:

Storage (including weighing), per season	50 cents per ton.
Loading out	20 cents per ton.
Weighing only	25 cents per ton.

The rate proposed is a flat charge of $1.00 per ton per season.

Under these rates, so-called season storage includes the care and protection of grain, as well as legal responsibility therefor from June 1st of any given year to May 31st of the following year, it being understood that the loading out charge of 20 cents per ton would be reserved to warehouseman in each case. This service, however, was not actually performed by the applicant but by an itinerant loading crew organized for the purpose of loading grain along the lines of the Southern

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Pacific Company, being regularly employed to do this service upon receipt of shipping orders. But since it was necessary, in all cases, to pay this loading crew an amount equal to the rate collected from the owner of the grain, warehouseman did not profit as a result of this prevailing custom. The charge of 25 cents per ton for weighing only applies to such grain as is passed over the warehouse scale but is not placed in storage, and is practically negligible in quantity. The proceeds from this source have been correspondingly small.

One of the chief difficulties with which warehousemen in this vicinity have to deal is the annually recurring misunderstandings with warehouse receipt holders concerning charges for re-sacking. Under the present system the expense of re-sacking, which is made necessary by reason of the use of secondhand sacks, inferior quality or sunburnt condition of new sacks, or other causes, is borne by the final holder of the warehouse receipt when presented with order for delivery. These charges are of necessity variable in amount for the reasons just named, and have, in exceptional cases, run much higher than the entire charge for both storage and loading. By reason of this fact there has at times been grave suspicion among grain growers at some points in the Sacramento Valley that incidental charges of this kind were run up unnecessarily and to the irreparable loss of grain dealers. These re-sacking and overhauling expenses could not be known in advance and consequently could not be shown on warehouse receipt. It is therefore perfectly logical to assume that the grain buyers, in order to protect themselves, were forced to deduct from the price paid to the growers an amount at least sufficient to cover all possible costs incident to re-sacking. There is reason to believe that the amounts thus deducted have not only been ample in most cases to meet all expenses incurred, but in some instances an excessive burden has been thus laid upon the patrons of the warehouses. Very naturally, if a farmer should be unfortunate enough to be compelled to store his grain in one of the warehouses under suspicion whether unjust or otherwise, he would be forced to sell at a price sufficiently low to insure the buyer against all possible loss as to charges assessed preparatory to shipment. While the applicant in this case has not been thus embarrassed in any considerable number of instances, it will nevertheless prove a welcome change which promises to eliminate complaints of this kind.

If authorized, the proposed rate of $1.00 per ton per season for the storage of grain will, in addition to a high class of service of the same sort heretofore rendered, cover all necessary re-sacking (including new sacks if required), repairing of damaged sacks or otherwise placing the grain in proper condition for shipment; and will apply to all grain handled in the usual way, including old grain carried over from previous years and in the warehouse on June 1, 1915. The

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rate for weighing grain, etc., when not stored, will remain as at present charged.

The hearing in this application was held on June 3, 1915, at Esparto, the nearest available point to the interested parties, and although the usual notices "for mailing" were sent out by warehouseman, under direction of the Commission, to each of his patrons setting forth the purpose of the hearing at which each storer would be given an opportunity to be heard, not a single protest was registered nor was there any evidence to show that the proposed increased rate would prove objectionable to the growers. This, however, in view of the statements heretofore expressed in this opinion, is not surprising. In fact, if the charge is authorized it is not unlikely that the farmers will gain a decided advantage in being able to point to their warehouse receipts in refutation of all future arguments by prospective buyers that deductions must be made to meet all possible contingent charges upon shipment. To carry out this idea the applicant should see to it that all warehouse receipts show the proper information as to the authorized rate, as well as other legal requirements.

The record does not show that any commodities other than grain are carried in storage, and this opinion applies strictly to the storage of that product; but should it be found desirable or necessary to store other products, reasonable rates to cover the same will be filed with the Commission, as the law requires.

Applicant has submitted statements showing the financial results of the operation of this property for the past five years, beginning 1910. The following table will show the average tonnage, receipts and disbursements for the years in question:

	Tonnage	Receipts	Disbursements
1910	2,039 tons	$1,427 30	$1,148 95
1911	997 tons	667 90	735 85
1912	1,303 tons	912 10	845 35
1913	660 tons	462 00	615 98
1914	1,644 tons	1,150 80	966 30
Average per annum	1,329 tons	$924 02	$862 48

It will thus be seen that during the five years, 1910 to 1914, inclusive, there has been a total profit of $309.67, or $61.93 per annum. The average annual tonnage for the same period is shown to be 1,329 tons. The value of the property, as a whole, has been placed at $6,000.00. Assuming that the future years will yield no less in tonnage than has been indicated, we have the following comparison:

1,329 tons at proposed rate of $1.00, equals	$1,329 00
1,329 tons at old rate of 70 cents, equals	930 30
Difference	$398 70

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In the above statements and estimates of value furnished by applicant, which were entirely undisputed, an allowance of $25.00 per month was set apart as salary for the manager. It is desired that this allowance be increased to $50.00 per month, which, considering the nature of the business, does not seem to be unreasonable. As will be seen $300.00 of the $398.70 representing the sum due to the increased rate, if allowed, will be used to defray this additional expense.

Considered from the standpoint of valuations, the average of $398.70 realized annually from the advanced rate, would produce a rate somewhat higher than 6 per cent on the alleged investment of $6,000.00, which is not considered exorbitant in the present instance.

Under all the conditions surrounding this application, and particularly for the reasons set forth herein, I am of the opinion and find as a fact that the applicant is entitled to a higher rate for the storage of grain in Citrona Warehouse, and that $1.00 per ton per season is a just and reasonable rate for the service.

I submit herewith the following form of order:

ORDER.

E. Tadlock, sole owner of the Citrona Warehouse, having applied to the Railroad Commission for an order authorizing an increase in his warehouse rates for the storage of grain at Citrona, California, and a public hearing having been held upon said application and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted, and that applicant be permitted to charge and collect the following rate for the storage of grain, which rate the Commission hereby finds as a fact to be a just and reasonable rate:

Grain.

Storage per season (June 1 to May 31 following)_____ $1.00 per ton.

It is further ordered that the collection of this rate is conditioned upon the performance of all services usually rendered in handling this commodity, such as receiving, weighing, piling, carrying in storage, necessary re-sacking or placing in proper condition for shipment, and loading out.

It is further ordered that a schedule embracing the rate and conditions herein named be promptly filed with the Railroad Commission, and that the same be placed in effect as of June 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of June, 1915.

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DECISION NO. 2463.

IN THE MATTER OF THE APPLICATION OF CAPAY WAREHOUSE ASSOCIATION FOR AN ORDER FIXING WAREHOUSE RATES.

Application No. 1663.

Decided June 10, 1915.

Applicant, operating a warehouse at Capay with a rate for the storage of grain of 50 cents per ton per season, with an additional charge of 20 cents per ton for loading, applies for and is granted permission to establish a flat rate of $1.00 per ton per season for the storage of grain, such rate to become effective for the season beginning June 1, 1915.

Harry L. Huston, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Capay Warehouse Association, a co-partnership of Capay, California, for permission to increase its present rate for the storage of grain. As required under the terms of the Public Utilities Act, this association on April 25, 1912, filed with the Railroad Commission its schedule of rates charged for warehouse service as follows:

Grain.

Storage, first season	50 cents per ton.
Storage, second season (June 25 cents; July 25 cents)	50 cents per ton.
Storage, third season (June 50 cents; July 50 cents)	$1.00 per ton.
Loading	20 cents per ton.

Wool.

Storage, per bale	25 cents per month.

The rates which the Commission is asked to establish, viz: $1.00 per ton per season, will, after approval, cover the storage and incidental handling of all kinds of grain which may be offered, and would eliminate warehouseman's present method of assessing a higher or different charge for the second, third or succeeding seasons. This charge would affect the storage of grain only and the charges heretofore filed with the Commission to cover other commodities offered for storage would, under this application, be in no way disturbed.

The financial statement, tonnage statement, estimated value of warehouse property, and other alleged facts submitted with the application have been checked by a representative of the Commission, and were fully covered by the testimony of applicant's manager, Mr. S. Schwab.

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The tonnage, income and expense accounts presented with this application as an exhibit showing operations for the four years 1911-1914, inclusive, are as follows:

	Tonnage	Receipts	Expenses
1911	972	$1,079 77	$490 17
1912	2,323	694 96	602 22
1913	583	744 24	428 04
1914	1,767	1,132 13	765 77

These figures representing expenditures cover items of necessary outlay only, and do not take into account a sinking fund for annual depreciation; nor has there been allowed any sum whatsoever to pay for the supervision and management which the evidence in this case indicated is necessary in the operation of this property. The testimony further shows that during the past four years the present manager has devoted a large portion of his time to the warehouse business, for which he has received no compensation whatever. By this means he has been able to lay by an average annual surplus for each season amounting to $341.22, to be distributed as dividends among the various stockholders. Upon the basis of the increased rates applied for, should the future years prove to be as profitable as the record shows the last four years to have been, this amount may be augmented, upon the same tonnage basis, so as to realize an additional $422.30 per annum—or somewhat more than $35.00 per month—to pay for warehouse supervision. Certainly, this would not appear to be unreasonably high for the service required. If, on the other hand, there should be allowed for this service $600.00 per year, which applicant estimates it to be worth, the annual surplus would be reduced from $341.22 to $161.22, or about 4 per cent on an investment of $4,000.00.

Concerning the value of the property which has been placed at $4,000.00, this may be said: It is located in the outskirts of the village of Capay, on the line of the Southern Pacific Company, with the usual spur track facilities, and measures 40 by 300 feet, with a 16-foot wall. The building is constructed of corrugated iron, both walls and roof. Approximately 10 per cent of the floor is solid cement, the remainder being rough boards laid on gravel. The life of such a building, kept in proper repair, is estimated by the manager to be about 50 years.

The chief reason set forth in the application to justify an advanced rate is the alleged greatly increased cost of operation. There was but little evidence presented tending to establish this fact; however, the claim was not controverted. Other and greater reasons appeared in the testimony, upon which could very properly be based a claim for additional income. These points had to do with the diversity of crops

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during the last few years whereby not only the stored crops are changing from wheat to barley—the latter being considered less profitable from a warehouseman's standpoint—but the proportion of land devoted to orchards is continually increasing. It is probably only a question of years, when by reason of gradual replacement of grain acreage by more valuable crops, the grain warehouse business will fail entirely. On the other hand, it is agreed by applicant and others concerned that although a continuation of the present tendency would result in a falling off in receipts, $1.00 per ton per season is probably the maximum rate which grain growers could be expected to pay for storage.

There was also testimony concerning the old controversy between warehouseman and grain buyers as to when it is necessary to re-sack wasting grain, and who should pay for such re-sacking and needed repairs before shipping the grain out. It has been customary for warehousemen in the Sacramento Valley to assess this charge against the final holder of the warehouse receipt. Owing to the uncertainty of the amount which accrues, not only by reason of the condition of the grain and sacks when placed in storage, but also because of the length of time held in storage, it has been impossible for the grain buyer to make an accurate estimate in all cases of the probable re-sacking expense which might be necessary as to any particular lot of grain. This, according to common report, has led to a practice which compels the grower, in order to dispose of his grain, to deduct an amount from the market price sufficient to cover all possible re-sacking and other incidental charges not shown on the warehouse receipt, and in many cases an additional margin for safety.

It is clear that under this practice a farmer would be at the mercy of an unscrupulous grain dealer who would be prepared to enumerate previous expenses and quote figures (howsoever fanciful they may be) to show the enormous re-sacking charges which he may be called upon to make. On the other hand, there have also been complaints that some warehousemen have chosen to enrich themselves unjustly by assessing re-sacking charges where, in fact, no re-sacking had been done. Thus it will be seen that the farmer is, in certain instances, between the horns of this dilemma and will be forced to pay for the re-sacking and repairing howsoever indirectly it may be done. If the rate requested is authorized, it will be largely for the purpose of eliminating this uncertainty by which the grower himself suffers; and while a direct charge of $1.00 per ton per season will on its face appear to be an increase to the farmers of 30 cents per ton over the present rate, it will, nevertheless, mean the removal of the doubtful feature of the charge and enable him upon negotiations with the buyer to point to his warehouse receipt and affirm that all service charges are contained in the flat rate there shown.

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That the proposed rate set out in this application is looked upon by the growers as not being unfair, is indicated by the fact that although each patron of the warehouse was informed by letter of the pending application and invited to be present and be heard should he so desire, not a single protest was received nor was there any evidence of dissatisfaction from any individual concerned.

By reason of the foregoing statements, I am of the opinion and find as a fact that the rate prayed for is a just and reasonable rate and that this application should be granted, and that applicant should be permitted to charge and collect $1.00 per ton per season for all grain stored in warehouses now under its control, such authorization to be conditioned upon a high class of service of the general kind heretofore rendered, and in addition thereto, all necessary re-sacking (including sacks), repairing of sacks, and loading into cars, upon order for shipment.

I recommend the following form of order:

ORDER.

Capay Warehouse Association having applied to the Railroad Commission for an order authorizing an increase in its warehouse rates applying to the storage of grain at Capay, and a public hearing having been held upon such application and the Commission being fully advised in the premises,

It is hereby ordered that the application be granted and that applicant be permitted to charge and collect the following rate for warehouse service:

Grain.

Storage, per season (June 1 to May 31, following)_____$1.00 per ton.

It is further ordered that these rates shall include all service usually rendered in handling stored grain such as receiving, weighing, piling, carrying in storage, necessary re-sacking (including sacks), or placing in proper condition for safe shipment and loading out.

It is further ordered that a schedule embracing the above rates as well as rates now on file with this Commission and covering the storage of other commodities be promptly filed with the Railroad Commission and that the same be placed in effect as of June 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of June, 1915.

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DECISION No. 2464.

IN THE MATTER OF THE APPLICATION OF THE McCARTHY COMPANY AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES, FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1709.

Decided June 10, 1915.

REPORT OF THE COMMISSION.

The McCarthy Company having applied to this Commission for authority to transfer to the Board of Public Service Commissioners of the city of Los Angeles for the sum of $2,500.00 a certain public utility water system owned by said The McCarthy Company, which system supplies approximately 2,000 persons in the territory lying easterly of Moneta avenue and northly of Florence avenue, and in the territory lying southerly of Florence avenue and westerly of Hoover street; and the city of Los Angeles, through its board of public service commissioners, having joined in this application, and the terms of the transfer being as set forth in a form of deed attached to the application in this proceeding, marked "Exhibit B," which deed describes the property to be transferred as follows:

(*a*) All water pipes, service connections, meters, material and supplies on hand, consisting of water meters approximately ten in number, pipe, fittings and tools, pertaining to the system known as the water works of the Greater Los Angeles Water Company, and owned by said first party and supplying water in the territory lying easterly of Moneta avenue and northerly of Florence avenue in the city of Los Angeles, and in the territory lying southerly of Florence avenue and westerly of Hoover street in said city; including mains, connections and appurtenances in said Florence avenue and in Sixty-sixth street west of Main street, and all extensions of said water system in or outside of said city.

(*b*) All franchises and rights of way owned or held by or for said party of the first part and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works.

(*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers' property ratings, etc.

And the Commission being of the opinion that this is not a case in which a public hearing is necessary, and that said application should be granted,

It is hereby ordered that said application be, and the same is hereby, granted.

Dated at San Francisco, California, this 10th day of June, 1915.

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DECISION NO. 2465.

IN THE MATTER OF THE APPLICATION OF EDWARD STOLL AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES, FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1714.

Decided June 10, 1915.

REPORT OF THE COMMISSION.

Edward Stoll having applied to this Commission for authority to transfer to the board of public service commissioners of the city of Los Angeles for the sum of one thousand dollars ($1,000) a certain public utility water system owned by said Stoll, which system supplies approximately 1,000 persons in the city of Los Angeles in territory lying southerly of Slauson avenue, westerly of Estrella avenue, northerly of Sixty-fifth street and easterly of Budlong avenue; and the city of Los Angeles, through its board of public service commissioners, having joined in this application, and the terms of the transfer being as set forth in a form of deed attached to the application in this proceeding, marked "Exhibit A," which deed describes the property to be transferred as follows:

> (*a*) All water pipes, service connections and extensions constituting and pertaining to the water distributing system known as the "Edward Stoll Water Supply" in said city of Los Angeles, owned, used and operated by said Edward Stoll for supplying water in the territory lying southerly of Slauson avenue, westerly of Estrella avenue; northerly of Sixty-fifth street, and easterly of Budlong avenue; together with all mains and connections of or pertaining to said water system in any of said bounding streets, or elsewhere in said city; excepting wells, machinery, buildings, tank and land whereon same are located;
>
> (*b*) All franchises and rights of way owned or held by or for said first parties and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works;
>
> (*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers, property ratings, etc.;

and the Commission being of the opinion that this is not a case in which a public hearing is necessary, and that said application should be granted,

It is hereby ordered that said application be, and the same is hereby, granted.

Dated at San Francisco, California, this 10th day of June, 1915.

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DECISION NO. 2466.

THE CRESCENT CITY LIGHT, WATER AND POWER COMPANY

vs.

GEORGE M. KELLER AND HOBBS, WALL AND COMPANY.

Case No. 607.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING REHEARING.

The Crescent City Light, Water and Power Company having on June 12, 1915, filed with this Commission an application for a rehearing in the above entitled case and the commission being of the opinion that no good cause has been shown why a rehearing should be had,

It is hereby ordered that said application for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2467.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS.

Application No. 1599.

Decided June 11, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

In an order dated June 7, 1915 (Decision No. 2456), this Commission authorized applicant herein to issue $2,338,000.00 of 6 per cent collateral trust notes, to be dated July 1, 1915, and to mature July 1, 1917. These notes were to be issued for the purpose of refunding $2,338,000.00 of 6 per cent collateral trust bonds dated July 1, 1910, and maturing July 1, 1915.

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It was made a condition of the Commission's order that before the collateral trust notes were issued, applicant should secure the Commission's approval of a trust agreement providing for their issue. On June 8, 1915, applicant filed a copy of such agreement. The agreement so filed is an indenture between Pacific Light and Power Corporation and Mortimer N. Buckner, and provides for an issue of 6 per cent two-year gold notes in a sum not to exceed $2,338,000.00 to be dated July 1, 1915, and to mature July 1, 1917. These notes are to bear interest at 6 per cent per annum and to be of the par value of $1,000.00 each. They are to be secured by a deposit of $3,118,000.00 of first mortgage forty-year gold bonds of Southern California Gas Company, Series "A." It is provided that they may be redeemed by the corporation, upon due notice, at par and accrued interest, and that they may be exchanged on or before April 1, 1917, par for par, for the bonds of the Southern California Gas Company pledged as collateral security.

The corporation expressly agrees that the trust agreement will always be kept a first lien upon bonds pledged as security.

I am of the opinion that the proposed trust agreement filed by applicant in this proceeding is in proper form and should be approved, and I accordingly submit the following form of order:

ORDER.

Pacific Light and Power Corporation having filed for the Commission's approval a proposed form of trust agreement (a copy of which is filed with the original application herein and marked Exhibit "A") to be entered into between Pacific Light and Power Corporation and Mortimer N. Buckner, trustee, as hereinbefore set forth;

And it appearing to this Commission that said agreement is in proper form and should be approved;

It is hereby ordered that the agreement submitted by Pacific Light and Power Corporation in connection with the application herein and marked Exhibit "A" be, and it is hereby, approved.

The foregoing first supplemental opinion and order is hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

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DECISION No. 2468.

ROSSI AND ANDERSON COMPANY

vs.

SAN FRANCISCO, NAPA AND CALISTOGA RAILWAY AND NAPA TRANSPORTATION COMPANY.

Case. No. 758.

F. T. MOONEY

vs.

SAN FRANCISCO, NAPA AND CALISTOGA RAILWAY AND NAPA TRANSPORTATION COMPANY.

Case No. 759.

A. GOODMAN AND COMPANY

vs.

SAN FRANCISCO, NAPA AND CALISTOGA RAILWAY AND NAPA TRANSPORTATION COMPANY.

Case No. 760.

Decided June 14, 1915.

Complainants petition the Commission to establish a through route and joint rates between Calistoga and points on the San Francisco, Napa and Calistoga Railway and San Francisco and points reached by the Napa Transportation Company and an investigation showing that public necessity require the establishment of a through route, defendants directed to file a schedule of joint rates within thirty days, and if unable to agree upon a division thereof, application can be made to the Commission for a supplemental order establishing same.

Percy S. King, for Complainants.

John T. York, for San Francisco, Napa and Calistoga Railroad Company.

Milton T. U'Ren, for Napa Transportation Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

These cases involve substantially the same issue, were headed together, and will be disposed of in one report. Hearings were held at Napa, on April 16, 1915, and at St. Helena on April 27, 1915.

Complainants are merchants doing business in the town of St. Helena, and in substance, allege that the defendants decline to accept freight for

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transportation at through joint rates from stations on the one line to stations on the other, and that public convenience and necessity demand the establishment of a through route and joint rates between such points.

Defendant, San Francisco, Napa and Calistoga Railway, a common carrier, hereinafter referred to as the Railway company, operating an electric line between Calistoga and Vallejo and connecting with the Monticello Steamship Company plying between Vallejo and San Francisco, admits that it does not accept freight for transportation at through joint rates in connection with the Napa Transportation Company and, in justification thereof, recites that under existing traffic arrangement with the Monticello Steamship Company it has a through route and joint rates and satisfactorily serves the public; therefore denies that public convenience and necessity demand the establishment of another through route.

Defendant, Napa Transportation Company, a common carrier, hereinafter styler the Boat line, operating a steamboat between Napa and San Francisco, admits that it does not accept freight at joint rates between points on its line and points on the San Francisco, Napa and Calistoga Railway due to the Railway company's refusal to join with it in establishing a through route and joint rates.

During the hearings it developed that the only point in issue is whether or not public convenience and necessity require the establishment of a through route and joint rates between points located on the line of the Railway company north of Napa and points served by the Boat line south of Napa, to and including San Francisco.

At present there are two routes available for the transportation of freight between points north of Napa and San Francisco—an all-rail route via the Southern Pacific and a rail-and-water route via the Railway company in connection with the Monticello Steamship Company. Neither route directly serves landings on the Napa River south of Napa.

A representative of the Monticello Steamship Company testified that the boats of his company draw from eight to thirteen feet of water, that it is necessary to work the tides in order to dock at Winehaven, also that the freight service at landings between Vallejo and San Francisco in connection with the Railway company was practically abandoned about a year ago, the passenger traffic now furnishing the principal business of the company. It would thus appear that the Monticello Steamship Company is not particularly anxious to handle freight traffic to or from bay landings between Vallejo and San Francisco.

The Boat line not only makes all landings between Napa and San Francisco, but affords its patrons an additional service at the latter

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point, due to the fact that its Local Freight Tariff No. 1-A, California Railroad Commission No. 2, Rule 1, provides:

> "Ratings provided in this tariff apply in both directions between points indicated, to this company's steamer wharf at San Francisco, California, except that delivery will be made at other wharves, when a safe and suitable berth is provided, when tendered in lots of ten tons or over, or if delivery is made in lots of less than ten tons, consignees or consignors will be required to pay for a minimum of ten tons."

A further advantage is its Rule No. 5, which reads:

> "The charge for a special landing at any point will be $2.50 when the freight involved amounts to less than $10.00."

These rules, in many instances, not only operate to relieve consignees or consignors of the charges incident to cartage and transfer between the Boat line's wharf and other wharves at San Francisco, when the traffic is for transshipment by water craft, but tend to lessen the cartage charges on shipments destined to or from San Francisco proper when tonnage can be more conveniently handled at wharves other than the regular boat landings, subject to the tariff provisions quoted. Similar provisions are not carried in the San Francisco, Napa and Calistoga Railway's Local and Joint Class and Commodity Tariff No. 3, California Railroad Commission No. 3, concurred in by the Monticello Steamship Company; consequently the foregoing service is not afforded the public under the existing joint arrangement.

A witness for the Boat line introduced as an exhibit a petition circulated several years ago which was signed by shippers in the upper Napa Valley, appealing to the Commission to order a physical connection between the lines of defendant companies and the establishment of joint rates. The purpose of the exhibit was to show that public convenience and necessity demanded a through route and joint rates over defendants' lines. This exhibit, however, can be given but little consideration for the reason that but few of the sixty-five signers appeared at the hearings in support thereof.

A witness for complainants testified that consignments destined to Winehaven, a point located on the bay between Vallejo and San Francisco, when forwarded via the Railway company and the Monticello Steamship Company, are carried to San Francisco and reshipped to Winehaven via another line, necessitating a back haul at an additional expense. This indirect service is attributable to the difficulty of the Monticello Steamship Company's boats in making landings at Winehaven wharf when the tides are unfavorable.

One of the complainants testified that freight shipments between Napa River landings and stations on the line of the Railway company

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north of Napa to Calistoga, inclusive, are subject to two locals, plus a transfer charge at Napa, owing to absence of a through route and joint rates.

After carefully reviewing all the evidence presented in these cases I am convinced that a decided showing has been made that public convenience and necessity demand a through route and joint rates between points on the Railway company, north of Napa, to and including Calistoga, and points served by the Boat line south of Napa, to and including San Francisco. Further, that such through route and joint rates will afford patrons a much more direct and expeditious service at lower rates than are to be had under existing arrangement, particularly if the defendants incorporate in their schedule of joint rates the following rules and regulations which the Commission recommends and upon which the order hereto appended is predicated:

Application of Rates and Minimum Charge.

The rates shown herein apply:

(1) To and from the Napa Transportation Company's wharf at San Francisco. See Note "A."

(2) To and from other wharves at San Francisco, when a safe and suitable berth is provided. See Note "B."

(3) To and from Special Landings, at points other than those shown above. See Note "B."

NOTE "A": The minimum charge for any shipment, whether composed of one or more articles, will be 25 cents.

NOTE "B": The minimum charge will be $2.50 unless the aggregate of the freight charges amounts to $10.00 or over.

I do not anticipate that the defendants will have difficulty in agreeing upon the divisions of the joint rates for they have, as disclosed by the records, tacitly come to a mutual understanding; however, if such agreement can not be reached they shall apply to the Commission for a supplemental order establishing said divisions.

I submit herewith the following form of order:

ORDER.

Rossi & Anderson Company, F. T. Mooney and A. Goodman and Company having filed with this Commission complaints against the San Francisco, Napa and Calistoga Railway and the Napa Transportation Company, requesting an order of this Commission for the establishment of a through route and joint rates between points on the San Francisco, Napa and Calistoga Railway, north of Napa, to

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and including Calistoga, on the one hand, and between all points served by the Napa Transportation Company, south of Napa, to and including San Francisco, on the other, and the San Francisco, Napa and Calistoga Railway and the Napa Transportation Company having filed with this Commission their answers and a public hearing having been held and this Commission being fully apprised in the premises,

It is hereby ordered that a through route and joint rates be established between points on the San Francisco, Napa and Calistoga Railway, north of Napa, to and including Calistoga, on the one hand, and points served by the Napa Transportation Company, south of Napa, to and including San Francisco, on the other; and

It is further ordered that the joint through rates shall not exceed the joint rates shown in San Francisco, Napa and Calistoga Railway's Local and Joint Class and Commodity Tariff No. 3, California Railroad Commission No. 3, and the schedule or schedules containing same shall be published and filed with the Commission within thirty (30) days from the date of this order; and

It is further ordered that in case the carriers involved can not agree upon divisions of the joint rates herein established, that they make application to this Commission on or before thirty (30) days from the date of this order, at which time the Commission will proceed to establish said divisions as prescribed by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2469.

IN THE MATTER OF THE APPLICATION OF STOCKTON TERMINAL AND EASTERN RAILWAY COMPANY FOR AN ORDER SUPPLEMENTING DECISION NO. 514 WITH REFERENCE TO ISSUE OF BONDS OF SAID COMPANY.

Application No. 1537.

Decided June 14, 1915.

Applicant having heretofore been authorized to issue $224,000.00 face value of bonds for the purposes of completing and extending its line of railway, now applies for a modification of such order so as to permit the issuance of $319,500.00 face value of bonds to be issued to an engineering company who agree to complete such construction, and the contract between applicant and

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the engineering company being extremely unfavorable to applicant to the extent that certain of its officials have expressed themselves as being opposed thereto, application denied.

J. E. Adams and *J. A. Nesbit*, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application for a modification of this Commission's Decision No. 514 which permitted the sale of certain bonds under conditions as set forth in said decision to which reference is hereby made.

That decision, among other items, authorized the issue of $224,000.00 face value of first mortgage bonds, the proceeds thereof to be used for the improvement of applicant's line of railway from Stockton to Bellota and for the extension of applicant's railway from Bellota to Jenny Lind.

The issue of these bonds was conditioned upon the prior submission to the Commission of satisfactory evidence showing that a binding contract, or contracts, for the sale of the first mortgage bonds had been made.

On February 15, 1915, Stockton Terminal and Eastern Railroad Company submitted the application here under consideration. This application asks that the Commission issue a supplemental order authorizing the issue of bonds of the par value of $319,500.00, said bonds being a portion of those authorized under Decision No. 514. The applicant asks that these bonds be issued to the A. E. De Mayo Engineering and Construction Company, of New York City, under an agreement by the terms of which the De Mayo Engineering and Construction Company undertakes to complete the road from Bellota to Jenny Lind, a distance of 10.9 miles.

As an alternative, Stockton Terminal and Eastern Railroad Company requested that if the Commission should not elect to grant the order for the issue of bonds under the De Mayo contract, it should, in lieu thereof, permit applicant to sell bonds to an amount sufficient to construct two miles of road which the applicant stated would enable it to obtain additional business through the hauling of gravel.

Thereafter, on June 3, 1915, applicant, by wire, withdrew its alternative application referring to the two-mile extension, leaving as the only matter for consideration before this Commission at this time the issue of bonds in accordance with the provisions of the De Mayo contract.

This withdrawal was confirmed by letter under date of June 10, 1915.

The so-called De Mayo contract provides for the construction of the road from Bellota to Jenny Lind, for a consideration of $136,000.00,

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payable in first mortgage 6 per cent bonds of the Stockton Terminal and Eastern Railroad Company, at 80 per cent of their face value, and $50,000.00 par value of the capital stock of the United Investment Company, a holding company which controls the stock of Stockton Terminal and Eastern Railroad Company. The contract calls for the payment to the contractor of $750.00 as soon as the contractor is ready to proceed to California from New York; and a further $750.00 as soon as a survey of the line to be built is commenced.

No provision is made in the contract for a bond or other security which would bind the contractor to perform his obligation. In fact it appears that the contractor expressly declined to give a bond or to commit himself definitely to the assumption of any obligation.

It appears also that there is no condition upon the two preliminary payments of a total of $1,500.00 to be made by the railroad company to the contractor prior to the performance of any work under the contract.

At the hearing upon this matter Mr. J. E. Adams, president of the company, directly opposed an order by this Commission which would permit the company to enter into this contract. He stated that the directors of the railroad company were divided on the subject and called attention to several manifest inequities in the contract as drawn.

I have no hesitancy in stating my unwillingness to recommend that this Commission issue any order which would permit this company to go forward under the terms of the so-called De Mayo contract. It would be enforceable upon the railroad company and not upon the contractor, and it would call for an initial payment of $1,500.00 of which the contractor could take advantage and then decline to go forward with the work.

There are other provisions of this contract which in my opinion make it highly inadvisable that it should receive the sanction of this Commission, but I do not deem it necessary to present a detailed recitation of these features.

As this matter now stands, this Commission is confronted with the alternative of authorizing the issue of bonds under the provisions of the De Mayo contract or of denying the application. I recommend therefore that the application be denied and submit the following form of order:

ORDER.

Stockton Terminal and Eastern Railroad Company having applied to this Commission for an order modifying this Commission's Decision No. 514, as specified in the foregoing opinion, and it appearing for the reasons specified in the foregoing opinion that the application should be denied,

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It is hereby ordered that the same be and it is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2470.

IN THE MATTER OF THE APPLICATION OF MT. KONOCTI LIGHT AND POWER COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF CAPITAL STOCK IN THE SUM OF TWENTY-FIVE THOUSAND DOLLARS.

Application No. 1635.

Decided June 11, 1915.

Applicant applies for and is granted permission to issue 250 shares of its capital stock, of the par value of $100.00 per share to be sold at not less than par, proceeds to be applied partly to reimburse treasury for capital expenditures heretofore made, the balance for proposed new extensions.

William S. McKnight, for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by Mt. Konocti Light and Power Company for authority to issue 250 shares of its common capital stock, of the par value of $100.00 per share, on account of extensions made, or to be made, to its electric distributing system.

Applicant was incorporated April 25, 1911, for the purpose of distributing electricity in Lake County. It purchases its power from the Snow Mountain Water and Power Company at Hopland and carries it into Lakeport, from which point it distributes into surrounding territory.

Applicant has recently increased its authorized capitalization from 500 to 1,000 shares of common stock of the par value of $100.00 per share. Of this amount 500 shares are now outstanding, of which 200 shares were issued under an order of this Commission dated May 9, 1913. Applicant is a close corporation—its capital stock being held by four families. The company has paid no dividends during its existence.

Applicant has no bonds or notes outstanding; its entire indebtedness consisting of accounts payable in the sum of $17,174.91, as more fully set forth in Exhibit II (amended) attached to the original application.

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For the years 1913 and 1914 the company has reported earnings to this Commission as follows:

Year	Operating revenues	Operating expenses	Net operating revenues	Non-operating revenues
1912	$6,069 44	$5,664 70	$404 74	$1,696 21
1913	10,735 15	10,233 09	502 06	----------
1914	13,328 73	11,532 54	1,796 19	----------

Corporate surplus unappropriated, December 31, 1914, $4,232.19.

Applicant estimates the total cost of its main line, plant and system at approximately $50,000.00, to which should be added cost of extensions recently made, amounting to approximately $20,000.00.

Since the hearing of the application the company has amended in certain minor details the purposes for which it proposes to issue the stock herein applied for. As amended these purposes are as follows:

To payment of indebtedness incurred on account of capital expenditures	$17,174 91
To reimburse profit and loss account for money used for capital expenditures	4,232 19
To apply on cost of proposed new construction as set forth in Exhibit IV, attached to the original application	3,592 90
Total	$25,000 00

After a consideration of the evidence submitted by Mt. Konocti Light and Power Company, I am of the opinion that its application is proper and should be granted, and I accordingly submit the following form of order:

ORDER.

Mt. Konocti Light and Power Company having applied to this Commission for authority to issue and sell 250 shares of its common capital stock of the par value of $100.00 per share;

And a hearing having been held, and it appearing that the purposes for which applicant proposes to issue said stock are not in whole or in part chargeable to operating expenses or to income,

It is hereby ordered that Mt. Konocti Light and Power Company be, and it is hereby, authorized to issue 250 shares of its common capital stock upon the following conditions, and not otherwise:

1. The stock herein authorized to be issued shall be issued at not less than its par value of $100.00 per share.

2. The stock herein authorized shall be issued only for the following purposes:

To payment of indebtedness incurred on account of capital expenditures	$17,174 91
To reimburse profit and loss account for money used for capital expenditures	4,232 19
To apply on cost of proposed new construction as set forth in Exhibit IV, attached to the original application	3,592 90
Total	$25,000 00

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3. Mt. Konocti Light and Power Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be issued; and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted for the issue of stock shall only apply to such stock as shall have been issued on or before December 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2471.

IN THE MATTER OF THE APPLICATION OF THE CITY OF SANTA MONICA FOR APPRAISEMENT OF WATER PLANTS OF SANTA MONICA WATER COMPANY, IRWIN HEIGHTS WATER COMPANY, CITY WATER COMPANY OF OCEAN PARK, AND OCEAN PARK WATER COMPANY.

Application No. 1546.

Decided June 11, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of the above entitled proceeding having been fully covered by Applications Nos. 1561, 1562, 1563 and 1564, filed by the city of Santa Monica subsequent to the date of the filing of the petition in the above entitled proceeding, and it appearing that there is no necessity for taking further action herein,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 14th day of June, 1915.

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Decision No. 2472, grade crossing; not printed. See end of Volume.

DECISION NO. 2473.

GEORGE J. NADEAU

vs.

PACIFIC LIGHT AND POWER CORPORATION.

Case No. 807.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

George J. Nadeau having in his complaint asked for an order of this Commission directing the Pacific Light and Power Corporation to refund to complainant the sum of twenty dollars ($20.00), collected by defendant for setting a pole and installing service connections to two houses of complainant, and it appearing that the Commission has no jurisdiction to grant the relief asked,

It is hereby ordered that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2474.

IN THE MATTER OF THE APPLICATION OF H. A. McCLELLAND, MERCANTILE TRUST COMPANY OF SAN FRANCISCO, AND PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER TO SAID PACIFIC GAS AND ELECTRIC COMPANY OF ALL RIGHTS, TITLES AND INTEREST OF SAID H. A. McCLELLAND AND MERCANTILE TRUST COMPANY OF SAN FRANCISCO, IN AND TO A CERTAIN STREET RAILWAY IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

Application No. 1654.

Decided June 14, 1915.

H. A. McClelland, owning an extended street railway trackage in the city of Sacramento which the Pacific Gas and Electric Company is operating in conjunction with its street railway system at a monthly loss to McClelland of approximately $300.00, applies for permission to transfer such property to the Pacific Company, together with a payment of $4,500.00, provided the Pacific Gas and Electric Company shall maintain service thereon. Application granted.

Leo H. Susman, for Applicants.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed on April 28, 1915, and a public hearing was held on June 2, 1915. The application contains a full statement of the reasons which have led the applicants to desire to have this property transferred from McClelland and the Mercantile Trust Company to the Pacific Gas and Electric Company and they will be discussed here very briefly.

In April, 1910, H. A. McClelland, who owned a certain tract of land near the city of Sacramento known as "Elmhurst," wished to subdivide and sell this property, and in order to facilitate his operations desired a street railway line to give service to those who purchased lots and built homes in this subdivision. After some negotiations the Pacific Gas and Electric Company built a line from the end of their track, known as the "J Street Extension," about 3,000 feet through this "Elmhurst" tract. This work was done on the strength of an agreement, the terms of which were that Mr. McClelland was to pay for the cost of the line and pay 20 cents per car mile for all operation which took place over it; such fares as were to be collected being credited against the 20 cents per car mile. The Pacific Gas and Electric Company reserved the right to purchase this line at the end of the five-year period, which embraced the life of the contract, and the Mercantile Trust Company of San Francisco, was to hold the property in trust until the termination of the contract period.

The line was built as proposed and it has now been operated for about three and one-half years. Its earnings have fallen below its cost of operation (20 cents per car mile) about $300.00 per month, and Mr. McClelland finds this expense burdensome upon him and desires to transfer the property to the Pacific Gas and Electric Company. The Pacific Gas and Electric Company is willing to take over the property but it is not willing to pay therefor any of the cost of construction and Mr. McClelland has agreed to deed the property to the Pacific Gas and Electric Company and to pay it $4,500.00 in a lump sum, in consideration of that company maintaining operation upon it.

From the standpoint of the applicants this transfer is desirable and it will be a transaction which will accrue to the public benefit inasmuch as it is essential for those who have purchased lots at "Elmhurst," and erected homes there, that the street car service on this 3,000-foot extension shall be maintained. It is apparent that applicant McClelland could not hope to indefinitely maintain service over it at a personal loss of $300.00 per month, while the Pacific Gas and Electric Company is entirely able to continue operation on this line in consideration of the terms of the transfer and probable future earnings, and I believe it to

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be to the best interests of all concerned that this application should be granted.

The property to be transferred consists of the following items:

(1) That certain right of way for the construction, maintenance and operation of a standard gauge street railway to be operated by electricity by means of an overhead trolley system, and for the erection, maintenance, use and operation of all poles, braces, wires, and other appliances required for the transmission of electricity to be used in the operation of such street railway upon, over and along a certain piece, parcel or strip of land situate in the county of Sacramento, State of California, which right of way was granted to said Pacific Gas and Electric Company by Louis F. Breuner and Clara F. L. Breuner by deed bearing date the 8th day of February, 1911, and recorded in the office of the county recorder of said county of Sacramento in Book 334 of Deeds at page 70, and the street railway, together with its appurtenances, which was constructed pursuant thereto; also all of the rights in and to such right of way, and in and to the street railway, together with its appurtenances, which were granted by said H. A. McClelland to the said Mercantile Trust Company of San Francisco by deed bearing date, the 28th day of April, 1911, and recorded in the office of the said county recorder in Book 422 of Deeds at page 136.

(2) That certain right of way for the construction, maintenance and operation of a single or double track standard guage street railway to be operated by electricity by means of an overhead trolley system, and for the erection, maintenance and operation of such street railway over, along and across a certain piece, parcel or strip of land, having a uniform width of forty feet, situate in said county of Sacramento, and also the street railway, together with its appurtenances, which was constructed thereon, which right of way and street railway and its appurtenances were granted by said H. A. McClelland to said Mercantile Trust Company of San Francisco by deed bearing date the 16th day of May, 1910, and recorded in the office of said county recorder in Book 307 of Deeds, at page 340.

(3) Those certain rights which were granted to said H. A. McClelland by the Southern Pacific Railroad Company and the Southern Pacific Company, by agreement bearing date, the 6th day of December, 1910, including the right to construct, maintain and operate a single track electric railway, with the right to change the same at any time to a double track electric railway, at grade across the permanent way and railroad of the said Southern Pacific Railroad Company at Engineer's Station No. 206 plus 30, in said county of Sacramento, which agreement and rights were granted, assigned and transferred by said McClelland to said Mercantile Trust Company of San Francisco by deed bearing date, the 27th day of April, 1911, and recorded in the office of said county recorder, in Book 7 of Miscellaneous Records, page 308; and also the street railway, together with its appurtenances, which was constructed under and pursuant to the right granted by said agreement, which street railway and appurtenances were granted by said McClelland to said Mercantile Trust Company of San Francisco by the last mentioned deed.

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I recommend the following form of order:

ORDER.

H. A. McClelland and Mercantile Trust Company of San Francisco, and Pacific Gas and Electric Company, having applied to the Commission for an order authorizing H. A. McClelland and Mercantile Trust Company of San Francisco to convey, transfer and assign to Pacific Gas and Electric Company all the rights, titles, interests and estates of H. A. McClelland and Mercantile Trust Company of San Francisco in and to a certain street railway, appurtenances, rights of way and easements in the county of Sacramento, California, more particularly described in the opinion preceding this order; and a public hearing having been held, and it appearing that this application should be granted,

It is hereby ordered that this application be and the same is hereby granted, subject to the following conditions, viz:

(1) Pacific Gas and Electric Company shall maintain over the 3,000 feet of track now to be transferred to it the same service as is now or may hereafter be maintained upon the "J Street Extension."

(2) The Commission reserves the right to make such further orders in regard to this application as to it may appear to be right and proper.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2475.

IN THE MATTER OF THE RAILROAD COMMISSION'S INVESTIGATION ON ITS OWN MOTION INTO THE RATES, SERVICE, RULES, REGULATIONS AND PRACTICES OF W. L. COURTRIGHT, A WATER UTILITY, ENGAGED IN THE SALE OF WATER FOR COMPENSATION IN SAN RAFAEL, CALIFORNIA.

Case No. 797.

Decided June 14, 1915.

Complaint having been made by the consumers of respondent herein to compel the Marin Water and Power Company to take over and operate respondent's water system, the Commission institutes this investigation on its own initiative and it appearing that respondent's failure to properly supply his consumers with water is chiefly due to his own failure in payment of his water bills to Marin Water and Power Company:

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Held, Respondent directed to pay in advance, on or before the tenth of each month, his bill for water to the Marin Company, and to give his consumers adequate and continuous service, and is also permitted to collect from his consumers, if it shall be deemed necessary, the monthly rate in advance on or before the fifth of each month.

W. L. Courtright, in propria persona.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In Case No. 735, *McCoy et al.* vs. *Marin Water and Power Company,* in which case a decision is this day being rendered, the complainants asked this Commission to direct Marin Water and Power Company to serve water to them directly for use in the Laurel Dells Subdivision of San Rafael. The evidence in Case No. 735 shows that Laurel Dells Subdivision has been placed on the market by W. L. Courtright; that Courtright agreed to supply water to purchasers of lots in this subdivision; that he secures his water from Marin Water and Power Company and pumps it into a tank on the higher portion of the Laurel Dells Subdivision, from which tank the water is distributed to Courtright's customers through a distribution system constructed and owned by Courtright; that a portion of this subdivision could be supplied by Marin Water and Power Company by gravity flow, but that a number of Courtright's customers live at an elevation above the line of gravity flow and can not be supplied without pumping; that on a number of occasions, namely, May 5, November 14, December 7, 1914, and April 11, 1915, Marin Water and Power Company shut off Courtright's water by reason of his failure to make the necessary monthly advance payments for water, with the result that Courtright's consumers were without water for periods ranging from one day to two or three days; and that the complainants in Case No. 735 accordingly desire to discontinue taking water from Courtright and to have this Commission direct Marin Water and Power Company to build its distributing system into this subdivision and to serve complainants and others directly.

The evidence in Case No. 735 shows that Courtright has completely piped this subdivision and that it would be a waste of money to direct Marin Water and Power Company to duplicate his system. Marin Water and Power Company is unwilling to take over the operation of the system because of the fact that it will be necessary to pump water to supply a number of Courtright's consumers. The Martin Water and Power Company is unwilling to establish a precedent which may result in the company's being asked to pump water in a large number of other cases in which subdivisions at a high elevation are or may hereafter be placed on the market. Mr. Courtright desires to retain his distribution system so as to be in a position to deliver water to other

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lands which he is subdividing and which he desires to supply with water through this system.

The Commission being of the opinion that the complaint in Case No. 735 could not be satisfactorily adjusted unless Courtright were brought before it, instituted the above entitled investigation, on its own motion, into the rates, rules, service, regulations and practices of Courtright. A public hearing in this investigation was held in San Francisco on May 22, 1915.

The evidence on this hearing shows that the entire difficulty has resulted from Courtright's failure to pay his monthly bills, in advance, to Marin Water and Power Company. The company is now suing Courtright for moneys due for water delivered in the past, and does not feel justified in delivering water further except on prepayment, month by month. Courtright claims, in partial justification, that his consumers are slow in paying their monthly bills, and that he needs the money from this source to enable him to pay the bills of Marin Water and Power Company. The evidence shows that Courtright is buying his water from Marin Water and Power Company at 30 cents per thousand gallons and that he is reselling it at 50 cents per thousand gallons. Some water is lost in Courtright's distributing system and he is put to some additional expense to pump to his tank the water received from Marin Water and Power Company.

Marin Water and Power Company agreed at the hearing that it would extend the time for Courtright's monthly advance payments until the tenth of each month, so as to give him an opportunity to collect his bills from his own consumers. Courtright will have the right to demand payment in advance from such of his consumers as do not pay their bills promptly, with the privilege of disconnecting such consumers as do not make their advance payments by the tenth of the month.

Courtright drew attention to the fact that he could save considerable pumping expense and also leakage if a connection with the Marin Water and Power Company's main lying in the San Rafael and San Quentin road were made at a point in the extension of an unnamed street lying next northwesterly from Eva street. Such connection would enable Courtright to lead water directly to his three-inch distribution line and to serve a larger portion of his consumers without the expense of pumping. Marin Water and Power Company has agreed to make such connection without expense to Courtright for the connection itself and to install a one-inch meter.

Both the Commission and Marin Water and Power Company have gone as far as they could to improve Courtright's situation. He agreed with each purchaser in his subdivision to supply water, and it is his duty, both under his contracts and as a public utility, to see to it that his customers secure water continuously. The Commission will expect

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Mr. Courtright henceforth to pay his water bills promptly, so that there will be no occasion for shutting off the water and no necessity for further proceedings to compel the performance by Courtright of his obligation as a public utility.

I submit the following form of order:

ORDER.

The Railroad Commission having instituted on its own motion the above entitled investigation into the rates, service, rules, regulations and practices of W. L. Courtright, a water utility engaged in the sale of water for compensation in San Rafael, and a public hearing having been held and this case being now ready for decision,

It is hereby ordered that W. L. Courtright, a water utility, be and he is hereby directed to pay his monthly water bills to Marin Water and Power Company promptly, in advance, on or before the tenth day of each month, and to give to his consumers continuous and adequate water service. Mr. Courtright may require payment in advance from his consumers where necessary, such payment to be made on or before the fifth day of each month, and may disconnect any consumer who fails to make advance payments, when demanded, on or before the tenth day of each month.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2476.

W. C. DUNCAN ET AL.

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 503.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainants having on June 8, 1915, made written request to this Commission that the complaint in the above entitled proceeding be dismissed,

It is hereby ordered that the complainants' proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 14th day of June, 1915.

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DECISION NO. 2477.

IN THE MATTER OF THE APPLICATION OF COMMONWEALTH HOME BUILDERS AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1725.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

Commonwealth Home Builders having applied to this Commission for authority to sell to the city of Los Angeles its public utility water system, supplying approximately 350 persons in said city of Los Angeles in the territory bounded by Eighty-third street, Manchester avenue, Main street and San Pedro street, the terms of sale being set forth in a deed attached to the application in this proceeding and marked Exhibit "B," which deed describes the property to be conveyed as follows:

> All water pipes, service connections, appliances and appurtenances, pertaining to the water distributing system owned, used and operated by said first party for supplying water in the territory in said city bounded by Eighty-third street, Manchester avenue, Main street and San Pedro street, in Gotham Park tract;
>
> Together with all franchises and rights of way owned, held or used by said first party for the purpose of operating and maintaining said system, and with any and all rights of way and rights of ingress and egress necessary or convenient for the purpose of repairing, replacing, enlarging, operating or maintaining the same, and all maps and records pertaining to said system, and relating to pipes, services, consumers, property ratings, etc., excepting wells, machinery, buildings and tanks and the land whereon the same are located.

And the city of Los Angeles, through its board of public service commissioners, having joined in the application, and it appearing to the Commission that this is not a case in which a public hearing is necessary and that the application should be granted,

It is hereby ordered that this application be and the same is hereby granted.

Dated at San Francisco, California, this 14th day of June, 1915.

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DECISION NO. 2478.

H. J. McCOY, H. R. EKLUND, E. O. F. AMES, AND R. SPROTE

vs.

MARIN WATER AND POWER COMPANY.

Case No. 735.

Decided June 11, 1915.

E. O. F. Ames and *R. Sprote,* for Complainants.

Joseph Haber, Jr., for Defendants.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The complainants herein request that Marin Water and Power Company be directed to extend its distributing system for the purpose of supplying water directly to complainants and other persons living in the Laura Dells Subdivision of San Rafael. This subdivision was placed on the market by W. L. Courtright, who agreed to supply water to persons purchasing lots in the subdivision.

Mr. Courtright secures his water from Marin Water and Power Company and then distributes it as a public utility to some twenty-four persons living on lots bought from him.

The complainants herein complained of the service rendered by Courtright, and particularly that they have been without water a number of times by reason of the fact that Marin Water and Power Company shut off Courtright's water because he failed to make the necessary advance payments. The complainants desire to discontinue taking water from Courtright and to be served directly by Marin Water and Power Company.

A public hearing in this proceeding was held at San Francisco on February 8, 1915. It appeared at this hearing that the complaint could not be satisfactorily adjusted unless Courtright were brought before the Commission. Accordingly, the Commission instituted on April 5, 1915, on its own motion, an investigation into the rates, service, rules, regulations and practices of Courtright, assigning to the case No. 797. A public hearing in Case No. 797 was held in San Francisco on May 22, 1915. The order this day being rendered in Case No. 797 covers the complaint herein and makes unnecessary further consideration of this proceeding.

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I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision, and relief having been given to the complainants herein the Commission's order of even date in Case No. 797,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

Decision No. 2479, grade crossing; not printed. See end of volume.

DECISION No. 2480.

IN THE MATTER OF THE APPLICATION OF INTERSTATE TELEGRAPH COMPANY FOR AUTHORITY TO INCREASE THE RATES OF TOLLS AND CHARGES FOR PUBLIC SERVICE BY THE APPLICANT COMPANY BETWEEN RANDSBURG, KANE SPRINGS, SALT WELLS AND MOJAVE, IN THE COUNTIES OF KERN AND SAN BERNARDINO, IN THE STATE OF CALIFORNIA, AND TO ESTABLISH AND MAINTAIN A SCHEDULE OF THE RATES SO AUTHORIZED.

Application No. 1676.

Decided June 11, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Interstate Telegraph Company having at the hearing upon this application before Commissioner Gordon, at Mojave, on June 8, 1915, asked that this application be dismissed,

It is hereby ordered that this application be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 14th day of June, 1915.

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DECISION NO. 2481.

IN THE MATTER OF THE APPLICATION OF OTTO PACHMAYR AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1715.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

Otto Pachmayr having applied to this Commission for authority to transfer to the board of public service commissioners of the city of Los Angeles for the sum of six thousand dollars ($6,000.00), a certain public utility water system owned by said Pachmayr, which system supplies approximately 4,000 persons in territory lying partly inside and partly outside of the city of Los Angeles, and the city of Los Angeles, through its board of public service commissioners, having joined in said application, and the terms of the transfer being as set forth in a form of deed attached to the application in this proceeding, marked "Exhibit A," which describes the property to be transferred as follows:

> (*a*) All water pipes, service connections, meters, appliances, appurtenances and extensions constituting and pertaining to the water distributing system known as the water works of the Windsor Water Company and supplying water in the territory lying partly inside and partly outside of said city, and bounded as follows:
>
> On the north by Florence avenue between Main street and Figueroa street; thence from Florence avenue and Figueroa street southerly on Figueroa street to Eightieth street; thence westerly on Eightieth street to Vermont avenue; thence southerly on Vermont avenue to Manchester avenue; thence easterly on Manchester avenue to Moneta avenue; thence southerly on Moneta avenue to Barabee street; thence easterly on Barabee street to Main street; thence northerly on Main street to Florence avenue;
>
> Together with all mains, connections and appurtenances pertaining to said water system in any of said bounding streets, or elsewhere in said city, or in said county; and all water mains and the service connections, extensions and appurtenances thereof, owned, used and operated by said first parties, or either of them, or by said Windsor Water Company, for supplying water in said territory or elsewhere in said county; excepting wells, pumps, machinery, buildings and tank, and the land whereon the same are located.

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(*b*) All franchises and rights of way owned or held by or for said first parties, or either of them, or said Windsor Water Company, and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works;

(*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers, property ratings, etc.

And the Commission being of the opinion that this is not a case in which a public hearing is necessary, and that said application should be granted,

It is hereby ordered that said application be and the same is hereby granted, upon the following condition, and not otherwise:

This order shall not become effective until the board of public service commissioners of the city of Los Angeles shall have filed with the Commission a stipulation that it will furnish to all of the consumers of the public utility water system herein authorized to be transferred, service at least as adequate as that heretofore furnished by Otto Pachmayr.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2482.

IN THE MATTER OF THE APPLICATION OF BAKERSFIELD WATER COMPANY TO OBTAIN AN ORDER AUTHORIZING THE ISSUANCE OF BONDS FOR METERING ITS SYSTEM, AND TAKING UP CERTAIN INDEBTEDNESS.

Application No. 1662.

Decided June 11, 1915.

Applicant authorized to issue $25,000.00 face value of its ten-year 6 per cent bonds, proceeds to be used to meter its system, in the partial payment of a note issued in payment for equipment and to pay off the balance of construction cost of Plant No. 4; such bonds to be issued only after the Commission shall have issued a supplemental order stating the minimum price at which they shall be sold and approving the trust deed securing the same.

E. L. Foster, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application as modified by applicant at a hearing held at Bakersfield May 19, 1915, for an order authorizing it to issue and

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sell its second mortgage ten year 6 per cent serial bonds to the face value of $25,000.00 at not less than 90 and accrued interest.

In the application filed with the Commission, applicant asks for authority to use the proceeds to be obtained from the sale of the bonds to pay a note amounting to $8,000.00 in favor of First Bank of Kern and to pay the cost incurred by metering its water system. The evidence shows that $2,940.90 secured through the issuance of the $8,000.00 note in question was used to pay power bills due to Bakersfield Gas and Electric Company. The amount so paid Bakersfield Gas and Electric Company is an operating expense and therefore not capitalizable. Upon having their attention called to this fact, both Mr. Fairfax Williams, secretary of Bakersfield Water Company, and Mr. E. L. Foster, counsel for applicant, requested that the company be permitted to use the proceeds to be obtained from the sale of the bonds for the following purposes:

1.	To meter the system, estimated cost about	$14,000 00
2.	To pay part of First Bank of Kern's note, that portion of it for Frolich bills for cast iron pipe	5,059 10
3.	To pay balance cost Plant No. 4	4,591 29
	Total	$23,650 39

Applicant estimates the cost of metering its system as follows:

Cost of 1,400 meters at $7.10 per meter	$9,940 00
Cost of installing 1,400 meters at $2.90 per meter	4,060 00
Total cost	$14,000 00

Bakersfield Water Company also asks for an order from this Commission compelling it to meter its water system. I am of the opinion that the metering of this water system is for the best interests of the water consumers and utility. While in Decision No. 2266, *in re* Case No. 713, this Commission suggested that this utility meter its system as rapidly as its financial condition permitted it to do so and suggested a means whereby the consumers might co-operate to bring about such result, that decision does not contemplate that the question of meters should be left to the consumers to determine. I am of the opinion that the management of Bakersfield Water Company can meter its system without the order of this Commission, except if such improvement involves the issuance of stocks, bonds or other evidences of indebtedness.

For the foregoing reasons I dismiss this part of the application without prejudice.

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Bakersfield Water Company has an authorized bond issue of $50,000.00 first mortgage 6 per cent serial gold bonds. The bonds are dated July 1, 1912, and mature as follows:

No. of Bonds	Par Value	Date Due
1 to 5 both inclusive,	$5,000,	July 1, 1913.
6 to 10 both inclusive,	$5,000,	July 1, 1914.
11 to 15 both inclusive,	$5,000,	July 1, 1915.
16 to 20 both inclusive,	$5,000,	July 1, 1916.
21 to 25 both inclusive,	$5,000,	July 1, 1917.
26 to 30 both inclusive,	$5,000,	July 1, 1918.
31 to 35 both inclusive,	$5,000,	July 1, 1919.
36 to 40 both inclusive,	$5,000,	July 1, 1920.
41 to 45 both inclusive,	$5,000,	July 1, 1921.
46 to 50 both inclusive,	$5,000,	July 1, 1922.

The applicant reports that bonds numbered from one to ten, inclusive, have been redeemed and canceled. Funds to retire these bonds have been obtained by drawing upon the depreciation reserve.

The annual report for the year ended December 31, 1913, shows $6,140.11, and the annual report for the year ended December 31, 1914, $6,311.38 deducted from income and included in operating expenses because of depreciation. Of the $12,451.49 thus deducted from income, the applicant reports that the sum of $10,000.00 has been used to retire bonds. While it is to the interest of the utility to reduce its fixed charges, such reduction should be achieved through the appropriation of surplus or through refunding operations rather than through the appropriation of a depreciation reserve.

To date applicant has not submitted for approval a copy of the deed of trust securing the payment of the $25,000.00 face value, ten year, 6 per cent serial bonds which it proposes to issue and sell. Without such instrument at hand, the Commission can not at this time issue a final order in this proceeding. In this connection, I call applicant's attention to the fact that if the bonds were sold at 90 it would have to pay interest varying from approximately 7⅔ per cent to 16 per cent; depending on the maturity of the bonds. In view of the high interest rate, I shall not determine the minimum price at which the bonds may be sold until after applicant has submitted for approval its deed of trust; and definite and specific information as to the price at which it can sell its bonds.

Bakersfield Water Company reports as at December 31, 1914, assets and liabilities as follows:

Assets.

Fixed capital	$129,772 58
Cash and deposits	1,433 70
Accounts receivable	760 68
Interest receivable	72 73
Materials and supplies	2,194 52
Deficit	1,151 53
Total assets	$135,385 74

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Liabilities.

Capital stock outstanding	$ 60,000 00
Funded debt outstanding	40,000 00
Notes payable	8,218 85
Accounts payable	9,964 02
Taxes accrued	302 10
Reserve for accrued depreciation	16,432 87
Reserves from income or surplus	467 90
Total liabilities	$135,385 74

Bakersfield Water Company reports for years ended December 31, 1913, and December 31, 1914, earnings and expenses as follows:

Item	1913	1914
Operating revenues	$26,338 00	$28,622 07
Operating expenses	21,813 55	24,911 07
Net operating revenue	$4,524 45	$3,711 00
Other income	145 44	72 73
Gross corporate income	$4,669 89	$3,783 73
Deductions.		
Interest on funded debt	$2,850 00	$2,550 00
Other interest deductions	-------	639 51
Rent	-------	211 60
Amortization of debt discount and expenses	-------	253 85
Total deductions	$2,850 00	$3,654 96
Surplus for year	$1,819 89	$128 77
Surplus Account.		
Surplus beginning of year	*$2,896 44	*$1,076 58
Additions	1,819 89	128 77
Deductions	-------	203 75
Surplus end of year	1,076 55	*1,151 53

*Deficit.

I submit herewith the following form of order:

ORDER.

Bakersfield Water Company having applied to the Railroad Commission of the State of California for an order authorizing it to issue second mortgage ten year 6 per cent serial bonds to the face value of $25,000.00, and a public hearing having been held and it appearing to the Commission that the purposes for which applicant desires to expend the proceeds to be obtained from the sale of the bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Bakersfield Water Company be given authority and it is hereby given authority to issue and sell its second mortgage bonds to the face value of $25,000.00.

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The authority herein given is given upon the following conditions and not otherwise:

(1) No bonds shall be issued until this Commission has issued a supplemental order, fixing the minimum price at which the bonds herein authorized may be sold.

(2) The proceeds obtained from the sale of the bonds shall be used for the following purposes and not otherwise:

(*a*) To meter the system, estimated cost about	$14,000 00
(*b*) To pay part of First Bank of Kern's note, that portion of it for Frolich bills for cast iron pipe	5,059 10
(*c*) To pay balance cost Plant No. 4	4,591 29
Total	$23,650 39

(3) No bonds shall be issued by Bakersfield Water Company until this Commission has approved the deed of trust securing the payment of the second mortgage bonds herein authorized to be sold.

(4) No part of the proceeds to be obtained from the sale of the bonds herein authorized shall be used to pay the balance due on Plant No. 4, until applicant shall have submitted to this Commission for approval a statement showing to whom such payments are to be made and the amount due to each party.

(5) Bakersfield Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(6) The authority herein granted shall apply only to such bonds as may be issued and sold on or before February 1, 1916.

(7) The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

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Decision No. 2483.

W. J. ROGERS AND CENTRAL PACIFIC LAND AND LUMBER COMPANY

vs.

SACRAMENTO VALLEY WEST SIDE CANAL COMPANY AND WILLIAM F. FOWLER, RECEIVER OF THE PROPERTY OF SACRAMENTO VALLEY WEST SIDE CANAL COMPANY.

Case No. 597.

SACRAMENTO VALLEY REALTY COMPANY ET AL.

vs.

SACRAMENTO VALLEY WEST SIDE CANAL COMPANY AND WILLIAM F. FOWLER, RECEIVER OF THE PROPERTY OF SACRAMENTO VALLEY WEST SIDE CANAL COMPANY.

Case No. 673.

Decided June 14, 1915.

Complainants generally attack the rates, rules and regulations and service of respondent, alleging that its rates are discriminatory, exorbitant, unjust, and that it has refused to serve a number of irrigationists who have applied for service on property lying within the district which respondent holds itself out as serving.

Respondent in return claims that it is a mutual company, serving its stockholders only and such other consumers as had contracts for service with its predecessors, and accordingly is not obligated to supply water to the public in general. That its rates are not exorbitant but entirely too low, as it is not paying operating expenses and rates should be increased accordingly.

After an investigation into the history of respondent, it appears that it has, in court proceedings admitted its liability as a public utility. That its water was primarily appropriated for general distribution, though its present owners have attempted to divert this canal system to a private use. That respondent is at present serving consumers other than stockholders and is a public utility subject to this Commission's jurisdiction.

Under a previous decision of the State Supreme Court respondent was directed to serve all irrigationists demanding service whose land lies within the boundary of the old Central Irrigation District, and thereafter such others outside the district, to the extent of its ability to supply. That owing to certain limiting factors, respondent's system at present can irrigate only approximately 46,000 acres, though when developed to its fullest capacity it is capable of properly irrigating a district comprising 100,000 acres. That to find a value of this plant is unnecessary in the present proceeding, inasmuch as the few consumers at present requiring service can not be expected to pay a rate permitting of a full return upon a property constructed to supply a considerably larger area, they being obligated to pay only a reasonable return for the service rendered. That when private interest constructs an irrigation system for the purposes of enhancing land values and stimulating the sale of such property, which project is not a success, if such canal system is dedicated to public use, a few consumers can not be compelled to pay a rate permitting of a full return thereon.

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Consideration must also be given to a rate which consumers may reasonably be expected to pay. That as the system is at present operated, the limited number of consumers are unable to pay a rate sufficient to cover the operating expenses of this utility. That the formation of an irrigation district to take over this property is the proper solution of these difficulties. Respondent objects to the sale of water for the purposes of irrigating rice lands which require approximately 5 to 6 acre feet per season, though consumers desire to plant over 7,000 acres, the receipts from which would materially increase respondent's revenues, as such increases are eminently desirable from an operating point of view and necessary to the continued operation of this system, rates established for such service.

An investigation into the present rates of respondent reveals the fact that certain of its consumers are receiving water under a contract rate of $1.00 per acre per season while others are paying $2.00 and more for the identical service. Respondent directed to discontinue such discriminatory rates and to put into effect within thirty days the following schedule: A flat rate of $7.00 per acre per annum for irrigating rice and $2.00 per acre per annum for all other crops, or when water is measured, $2.00 per acre per annum for the use of 1½ feet per acre and $1.50 per acre per annum for each additional 1½ feet. Respondent also directed to supply water to lands of complainants and such additional laterals as may be necessary for such service, complainants directed to construct and respondent to deliver water through. Respondent also directed to prepare and file within thirty days a draft of proposed rules and regulations governing the distribution of water over its system. Complaint in all other respects dismissed.

W. T. Belieu, for W. J. Rogers and Central Pacific Land and Lumber Company, and for protesting consumers in Case No. 673.

Charles L. Donohoe and *Charles H. Sooy,* for Complainants in Case No. 673.

Frank Freeman, for Sacramento Valley West Side Canal Company.

William E. Kleinsorge, for James M. Berry, Intervenor in Case No. 673.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The above two cases were consolidated for hearing and decision. The complaint in Case No. 597 alleges, in effect, that W. J. Rogers was heretofore the owner of certain lands in Glenn County, California, particularly described in the complaint; that in order to secure water to irrigate said lands he was obliged to sign two contracts with Central Canal and Irrigation Company, a public utility; that by the terms of one of these contracts, dated November 20, 1907, he obligated himself to pay for water $3.00 per acre for the first ten years and $2.00 per acre thereafter during the corporate life of Central Canal and Irrigation Company, for the purpose of irrigating a tract of 205 acres; that by the terms of the other contract, dated June 2, 1908, Rogers obligated himself to pay the water company the same amounts per acre as specified in the first contract, for the purpose of irrigating a tract of 1,363.24 acres; that by subsequent agreement, the rate for irrigating

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the tract of 205 acres was reduced from $3.00 to $2.00 per acre; that Rogers, in June and August, 1908, transferred to Central Pacific Land and Lumber Company these two tracts of land; that Sacramento Valley West Side Canal Company, the defendant in the above entitled actions, is the successor in interest of Central Canal and Irrigation Company in and to the latter company's canals and irrigation system; that Sacramento Valley West Side Canal Company has filed with the Railroad Commission a schedule of rates charged by it for the sale of water under certain contracts, which rates are as follows:

3,873.53 acres at	$1 00	per acre
23.70 acres at	1 50	per acre
2,147.93 acres at	2 00	per acre
1,363.24 acres at	3 00	per acre

That the acreages thus reported form but a small portion of the lands irrigated by Sacramento Valley West Side Canal Company, and that the water for all other lands irrigated by the company is claimed to be distributed under a so-called mutual plan and not by the company as a public utility; that Sacramento Valley West Side Canal Company is selling water to purchasers of land from companies incorporated by J. S. and W. S. Kuhn of Pittsburg at rates much less than those charged complainants and many other land owners; that Sacramento Valley West Side Canal Company refuses to sell water to the capacity of its system except to purchasers of land from the Kuhn companies, unless the applicant for water pays an extortionate price for a so-called water right; that the rates charged complainants by the defendant for water are excessive, unreasonable, unjust and discriminatory and that a reasonable rate should not exceed $1.00 per acre per annum. Complainants ask that defendant be ordered to cease collecting any excessive, unjust or discriminatory rate for the sale of water to complainants; that this Commission establish just and reasonable rates for the sale of water for irrigation purposes, which rates shall be applicable to water sold for use on the land of complainants during the last two years; that the Railroad Commission determine the capacity of the defendant's water system and compel defendant to sell water at reasonable rates to all land owners applying for the same, whose land can be served by the company's canals and ditches; and that the Commission establish just and reasonable rules for the distribution of water to the company's patrons.

The answer alleges, in part, that Central Canal and Irrigation Company, at the time it entered into the above mentioned contracts with Rogers, was a public service corporation, engaged in the business of selling and distributing water in Glenn and Colusa counties; that in 1909, the water system of Central Canal and Irrigation Company was transferred to Sacramento Valley Irrigation Company, which company

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in turn transferred the system to Sacramento Valley West Side Canal Company, the present owner thereof, which company, it is alleged, was organized for the purpose of distributing water to its stockholders only; that Sacramento Valley West Side Canal Company has continued to deliver water to all persons who held contracts from Central Canal and Irrigation Company, although the cost of the delivery of water is alleged to be in excess of $8.00 per acre per annum for each acre of land irrigated; that Rogers paid the amounts specified in his two contracts as water rental up to 1910, at which time a revision in the rate was arranged between Rogers and the water company; and that only partial payments have been made on the amounts due for 1912 and 1913. The answer denies that Sacramento Valley West Side Canal Company filed with the Railroad Commission any schedule of rates as a public utility; alleges that the company has at all times claimed to be a mutual water company and not a public utility; admits that complainants have been engaged in a controversy with defendant as to the amount due defendant for furnishing water; alleges that complainants have refused to abide by the terms of the agreements made between complainants and defendant with reference to the rates to be paid for water; alleges that the rates provided in all the contracts of Central Canal and Irrigation Company are too low; and contends that it should not be compelled to furnish water at less than $8.00 per acre. Defendant prays that the complainants be compelled to pay all balances due upon the above mentioned two contracts and that for the future the rates to be paid by complainants shall be increased to $8.00 per acre.

The complaint in Case No. 673 alleges, in effect, that each of the forty-nine complainants is an owner of land in Glenn County; that defendant is a public utility, incorporated for the purpose of appropriating water from the Sacramento River and Stony Creek and of selling the water for the purpose of irrigating agricultural lands; that the company's system of pumps, pumping stations, ditches, conduits, flumes and pipes already constructed within Glenn and Colusa counties have a capacity sufficient to irrigate 160,000 acres of land in Glenn and Colusa counties; that the lands of complainants are all embraced within the territory which can be irrigated from defendant's water system; that complainants desire water from defendant's water system for the irrigation of their lands and the production of rice, alfalfa, fruit trees and other crops; that complainants have applied to defendant for water for irrigating their lands and that they have been and are willing to pay defendant a reasonable compensation for such water; that defendant has refused to deliver water to complainants at any reasonable or just price or at all; that certain of the complainants have been informed by defendant that no water will be delivered by defendant for any land

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under its canal system other than land owned or controlled by Sacramento Valley West Side Canal Company or Sacramento Valley Irrigation Company unless $75.00 per acre is paid by applicant in addition to a water rental; that said sum of $75.00 per acre is excessive and prohibitory; that Sacramento Valley Irrigation Company owns a controlling interest in defendant's capital stock and that defendant has entered into a contract with Sacramento Valley Irrigation Company to sell water to the lands of Sacramento Valley Irrigation Company and to no other lands; and that defendant's water system is of sufficient capacity and that defendant has appropriated enough water to supply all the lands under the irrigation system, including the lands of complainants. Complainants thereupon pray that the Railroad Commission determine the capacity of defendant's water system and compel defendant to sell water at reasonable rates to all land owners owning land which can be served by the water system; that the Commission determine what lands can be served by the defendant's system; that the Commission establish just and reasonable rates, rules and regulations in connection with the sale of water by defendant for irrigation purposes; that the Commission determine whether defendant should construct the laterals or ditches leading from defendant's main canal to the lands of complainants or whether complainants shall construct such laterals and ditches at their own expense.

The answer states fully, from defendant's point of view, the history of the canal system operated by defendant. Defendant denies that it is a public utility and claims that it is simply a mutual water company, not subject to the jurisdiction of the Railroad Commission. Defendant alleges that it took over the contracts formerly entered into by Central Canal and Irrigation Company and that it has continued under protest to deliver water to the contract holders at the rates specified in the contracts, at considerable loss to defendant. The company claims that the full capacity of its water system as at present constructed is 60,000 acres and that defendant has no water for delivery to any lands other than those of its stockholders. The company alleges that when its water system has been fully completed, it will not irrigate more than 100,000 acres of land, this being 18,000 acres of land less than defendant's shares of capital stock already issued. Defendant draws attention to a judgment rendered by the Superior Court of Colusa County on March 14, 1913, in the case of *Byington et al.* vs. *Sacramento Valley West Side Canal Company,* in which case it was held that defendant is a public utility and is obligated to deliver water to the lands of complainants in that case, although these lands are not owned by stockholders in Sacramento Valley West Side Canal Company. Defendant claims that this judgment is erroneous. Defendant asks that all the water right contracts entered into by Central Canal and Irrigation

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Company be canceled and set aside and that if defendant is required to continue to serve the lands covered thereby, it be allowed to collect an increased rate, which the defendant claims should be at least $9.00 per acre per annum; that this Commission authorize defendant to make such amendments to its articles of incorporation and by-laws as will insure the preservation of rights to water to persons owning stock in the defendant and to whose lands water of defendant has been attempted to be made appurtenant; that the Railroad Commission determine that defendant has not been and is not now a public utility, and that the lands of complainants are not entitled to be served with water by defendant; that if the Railroad Commission should determine that defendant is a public utility, it should also determine that all the land to which stock of the defendant has been attached, being some 118,000 acres, shall be served with water prior to the service of water to any other lands; and that the Railroad Commission take into consideration in its order the judgment and decree heretofore rendered by the Superior Court of Colusa County in the *Byington* case.

Public hearings in these cases were held in Willows on October 23, 1914, and January 21, 22 and 23, 1915, and in San Francisco on January 27, 28, 29 and 30, and February 1, 2 and 3, 1915. Thereafter, in order to give full opportunity to rate-payers, under the contracts of Central Canal and Irrigation Company, to present their views in opposition to the increase in rates asked by the defendant, a supplemental hearing was held in Willows on April 6, 1915. On the same day, the Commissioner presiding in these cases made a personal inspection of the head works of defendant's water system and of a portion of the main canal and the river branch canal and of a portion of the lands irrigated from said system, including particularly all the lands irrigated under defendant's system for the culture of rice in 1914. Time was granted for the filing of briefs, as requested by the parties. These briefs have been filed and these cases are now ready for decision.

These cases are among the most difficult which have been presented to the Railroad Commission for decision. They are the culmination of almost thirty years of doubt, uncertainty and disaster in the irrigation situation of Glenn and Colusa counties. They are not merely replete with legal and economic difficulties, but also represent a situation which from a financial point of view is almost impossible to solve satisfactorily under existing conditions. The difficulties of the situation, of course, can not deter the Commission from proceeding in the performance of its duties. I have given careful and earnest consideration to the problems presented by these cases and shall try to work them out in accordance with the law of this State as applied to the facts here presented.

At the very outset, we are met by the claim of defendant that it is not a public utility and that this Commission has no jurisdiction over

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the same. On April 29, 1915, subsequent to the submission of these proceedings, the Supreme Court of California rendered its decision in the case of *Byington et al.* vs. *Sacramento Valley West Side Canal Company*, hereinbefore referred to. The court affirmed the judgment of the Superior Court, which held that it is defendant's duty to serve water to the complainants, without payment for any so-called water right, and that defendant can not serve water outside the limits of the old Central Irrigation District until the requirements of the lands within said district, including the lands of the plaintiffs in that suit, have been fully complied with. The Supreme Court draws attention to the fact that the pleadings below expressly admitted that Sacramento Valley West Side Canal Company is a public utility, and proceeds on the theory that defendant is such public utility, in charge of water and an irrigation system devoted to the use primarily of the public, owning lands within the limits of the old Central Irrigation District.

In the proceedings now pending before this Commission, defendant in its answer in each case claims that it is a mutual water company obliged to serve no one except its own stockholders and expressly denies that it is a public utility. Defendant has consistently maintained this position throughout these proceedings. It accordingly becomes necessary to analyze the facts so as to determine on the facts whether defendant is or is not a public utility.

In order to present the matter clearly, I believe it will be well to present a short history of the water system now being operated by defendant, with particular attention to those facts which may have bearing on the question whether or not defendant is a public utility.

On November 22, 1887, at an election held in accordance with the provisions of the Wright irrigation district law of 1887, an irrigation district, known as Central Irrigation District, was formed in a portion of what was then Colusa County. The territory covered by the district consisted of some 156,000 acres. The purpose of the district was to take water from the Sacramento River at a point in Colusa County, near the southern boundary of Tehama County, and thence to convey the same by means of a main canal with branch canals and laterals, to all the lands of the district. The main canal was designed to run through Colusa County (now Glenn County) in a general southerly direction, directly east of the town of Willows, and thence southerly past the towns of Maxwell and Williams to an intersection with Cortina Creek, in Colusa County, at a point about half way between Williams and Arbuckle. The main canal, as thus completed, would have a total length of some 62 miles. The lands included in the district were the lands lying in the present counties of Glenn and Colusa, between the main canal and the Sacramento River, with the exception of several thousand acres adjacent to the Sacramento River.

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In pursuance of this general plan, the district issued its bonds in the total amount of $523,145.00. By means of the bonds thus issued, the district excavated the main canal from a point about 2,000 feet south of the Sacramento River, where the headgate of the canal is now located, southerly to Stony Creek, a distance of about six miles. A bulkhead and gates were constructed on each side of Stony Creek, with a conduit to carry water across Stony Creek between the headgates. From the south side of Stony Creek the canal was finished for a distance of about three and a half miles to the property of the Glenn estate. A distance of about six and a half miles across the Glenn estate was not constructed because of inability at that time to secure the right of way. From the south line of the Glenn ranch the canal was completed with only occasional small gaps, for a distance of 18 miles, to a point on the road running west from Norman. South of Norman there was a gap of about four miles. Beyond the southerly end of the gap the canal was practically completed, with a few small gaps, to a point several miles south of Maxwell, in Colusa County. Of the total of $523,145.00 of bonds issued by Central Irrigation District, bonds of the face value of $24,500.00 were issued in exchange for rights of way. After this work had been done, it became impossible to secure the necessary additional funds, and work stopped in the latter part of 1891. For eleven years the project was left in this incomplete condition. The Central Irrigation District never appropriated any water and never conveyed any water through the partly constructed canal.

In 1889, in *Central Irrigation District* vs. *De Lappe, Secretary,* and *Lee S. Wakefield, Intervenor,* 79 Cal. 351, the Supreme Court of this State held on the evidence then presented to it, that Central Irrigation District had been validly organized and that the form of its proposed bonds was entirely lawful. In *Quint* vs. *Hoffman,* 103 Cal. 506, decided on August 8, 1894, being an action by Quint to enjoin the collector of Central Irrigation District from selling a portion of Quint's land for failure to pay assessments levied by the district in 1892, the Supreme Court held that the validity of the organization of Central Irrigation District could not be attacked collaterally and that in considering the validity of the assessment, it was immaterial whether the district existed *de jure* or *de facto*. *In the matter of the organization and of the bonds of Central Irrigation District,* 117 Cal. 382, decided on June 24, 1897, the Supreme Court held that the Central Irrigation District had been illegally organized. The principal ground of the decision was that of the fifty signers necessary to the petition to institute proceedings for the formation of a district, a considerable number were storekeepers and lot owners in the towns instead of being owners of agricultural lands, as contemplated by the Wright act. The court expressly declined to pass

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upon the question of the validity of the bonds which had been issued by the district. These bonds passed through various hands, and were finally acquired for thirty-five cents on the dollar of principal plus interest by J. S. and W. S. Kuhn of Pittsburg, in connection with their purchase of lands and the irrigation system in Glenn and Colusa counties, as will hereafter appear. There has never been an authoritative determination as to whether these bonds constitute a valid lien on the property included within the old Central Irrigation District.

After a period of eleven years, during which no work was done on the canal, Willard M. Sheldon and associates undertook to complete the canal and to irrigate lands in Glenn and Colusa counties therefrom. In pursuance of this plan Sheldon, in January, 1903, secured from the directors of the irrigation district a lease of the entire property for the period of fifty years, at a rental of $25.00 per year. This rental was regularly paid until at least 1910 or 1911. Sheldon then procured the incorporation of Central Canal and Irrigation Company, to which company he assigned the lease, in accordance with the understanding at the time he secured it. Central Canal and Irrigation Company was unquestionably a public utility. On October 28, 1903, Central Canal and Irrigation Company posted on the banks of Sacramento River, near the point of intake of the main canal, a notice of appropriation of the waters of the Sacramento River to the extent of 5,000 cubic feet per second. The notice states that it is intended to divert the water from the Sacramento River "and to conduct said water thence down the west bank of said river in a southerly and westerly direction about one hundred and fifty miles to, through and over the counties of Glenn, Colusa, Yolo and Solano in the State of California, according to the topography of the country over which said water is to be used and there to furnish water for the use of the Central Canal and Irrigation Company or its assigns or to persons desiring the same, for irrigation, water power and domestic purposes, and for all purposes for which water may be used, and for all purposes incident thereto and incidentally for all legitimate purposes."

On November 14, 1904, Central Canal and Irrigation Company posted on the banks of Stony Creek, at a point on the south bank thereof, where the Central Canal intersected the same, a notice appropriating the waters of Stony Creek to the extent of 5,000 cubic feet per second. The notice stated that the purpose for which the water was to be used was "to supply water for domestic use and for irrigation." The notice stated that the place of intended use was "in the eastern portion of Glenn County and Colusa County, on those lands lying to the west of the Sacramento River therein and on either side of the Colusa Canal, also in the center portion of said Glenn, Colusa and Yolo counties on the lands lying to the east of the Central Canal, and to the east of the

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foothills bounding the western portion of the Sacramento Valley in the counties of Colusa and Yolo to the south of the point to which said canal has been constructed."

Before the plan of diverting waters of the Sacramento River into the Central Canal could be consummated, it became necessary to secure the consent of the Federal Government, because of the control of that government over navigation in the Sacramento River. In 1906 the Federal Congress granted to Central Canal and Irrigation Company the right to divert not to exceed 900 cubic feet of water per second from the Sacramento River, to be used "for irrigating lands of the Sacramento Valley on the west side of the Sacramento River, in said State of California." The report of the committee on interstate and foreign commerce, to whom the bill was referred, states that the water is to be used "for irrigating the arid lands of Glenn and Colusa counties, in the Sacramento Valley, in the State of California." Furthermore, the report states that "the territory covered by Central Irrigation District consists of more than 150,000 acres of as fine land as can be found in the world, and is the principal territory affected by this application for water under this bill."

In my opinion, there can be no reasonable doubt that the rights thus granted by the Federal Government were granted for the purpose of enabling Central Canal and Irrigation Company, a public utility, to distribute waters of the Sacramento River for public use, without discrimination, to lands west of the Sacramento River, in Glenn and Colusa counties.

After receiving this grant from the Federal Government, Central Canal and Irrigation Company proceeded with the extension of its irrigation system. The company completed the gap in the main canal between the southern bank of the Sacramento River and the location of the present headgate, a distance of some 2,000 feet; constructed several miles of canal across the property of the Glenn estate, for which right of way had not been secured by the irrigation district; completed the construction of the main canal, so that it became possible to conduct water through it to a point about six miles northeast of Willows; and constructed the river branch canal, which takes out of the main canal at a point near the north line of the Glenn estate and conducts water to a point some five or six miles south of Princeton. The company installed a pump on the southerly bank of the Sacramento River, which pump started operations in 1906. For three years, 1906, 1907 and 1908, Central Canal and Irrigation Company conducted water through the main canal and river branch canal to whomever cared to purchase it. An affiliated land company, known as Sacramento Valley Land Company, purchased the tracts of land known as the Boggs tract, the Packer tract and the Glenn tract, lying in the

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easterly portion of Glenn County, subdivided these lands and offered them for sale. A large number of purchasers of these tracts received water from Central Canal and Irrigation Company. In 1909, when the properties were transferred to the Kuhns, Central Canal and Irrigation Company was selling water as a public utility to several thousand acres of land under this system. It is admitted on all sides that up to this time the company's canal system was devoted to a public use and that the waters delivered through it were appropriated and actually sold for public use.

In 1909, J. S. and W. S. Kuhn, of Pittsburg, acquired the outstanding bonds of the old Central Irrigation District, purchased the stock of Sacramento Valley Land Company, thereby becoming the owners of the stock of Central Canal and Irrigation Company, and secured options on over 135,000 acres of land in Glenn and Colusa counties, which lands they proceeded to subdivide and place upon the market for sale, with the representation that water rights under the canal system were attached thereto.

The Kuhns, on August 14, 1909, caused the incorporation of Sacramento Valley Irrigation Company, which company was primarily the land company. Having acquired by stock ownership the control of both Sacramento Valley Land Company and Central Canal and Irrigation Company, the Kuhns caused these companies by deed dated September 20, 1909, to convey to L. D. Waddell, the nominee of the Kuhns, all the rights of these companies in and to the pumping station on the banks of the Sacramento River, installed by Central Canal and Irrigation Company, the main canal and the river branch canal, together with all laterals, ditches, branches, extensions, rights of way, lands, fixtures, buildings, structures and improvements owned, used or controlled in connection therewith, and the two appropriations of 5,000 cubic feet per second made by Central Canal and Irrigation Company, the one being of waters of the Sacramento River and the other of waters of Stony Creek, hereinbefore referred to, as well as the right granted by the Federal Government to Central Canal and Irrigation Company to divert the waters of the Sacramento River. Thereafter, on September 22, 1909, Waddell conveyed these same properties to Sacramento Valley Irrigation Company, the company organized by the Kuhns for the purpose of doing their land business in Glenn and Colusa counties. Thereafter, by deed dated June 16, 1910, Sacramento Valley Irrigation Company conveyed these same properties to Sacramento Valley West Side Canal Company, which company was incorporated by the Kuhns for the purpose of conducting their water business in these two counties. Sacramento Valley West Side Canal Company, hereinafter at times referred to as the Canal company, was incorporated under the laws of California on August 6, 1909, with a capital

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stock of $250,000.00, divided into 250,000 shares of the par value of $1.00 each. Under its articles as thus originally adopted, the company had the power simply of a mutual water company. It was authorized to distribute the waters which it might convey through the main canal and branch canals, only to its stockholders, and to seek compensation from its stockholders by means of assessments. It was thus attempted, through the transactions which I have indicated, to transmute a canal system devoted to the public use, conveying water appropriated for public use, into a system owned and controlled by a private mutual water company for the sole benefit of its private stockholders. True, the Canal company continued to supply water to the customers of Central Canal and Irrigation Company at the rates established by the contracts with that company, but as to all the other water conveyed through the canal system, the Canal company has claimed the right to utilize the same solely for the benefit of the lands bought by the Kuhns. The Canal company bound itself by contract dated June 16, 1910, to supply water to no lands other than the Kuhn lands, except upon the payment of $75.00 per acre for an alleged "water right." How the Kuhns and their advisers ever expected to convert to their private uses a water system and the waters thereof which had been devoted to the public, in such a way as to defeat the rights of members of the public other than those purchasing lands from the Kuhns, seems impossible to understand. In any event, the attempt to do so has added another difficult and complicated situation to those already existing in connection with this water system.

By the agreement of September 1, 1909, as modified by the agreement of June 16, 1910, hereinbefore referred to, Sacramento Valley Irrigation Company, the Land company, undertook to supply the necessary money to complete the main canal system, with the necessary laterals, and the Canal company in turn agreed to convey to the Irrigation company 249,500 out of its 250,000 shares of authorized capital stock. The plan was to have the Land company then attach this stock, one share to each acre, to lands owned by the Kuhns, so as to facilitate the sale of these lands at increased prices.

Acting under these arrangements, the Land company constructed a considerable portion of the main canal south of what is known as the Irrigated Farms Check, constructed a large number of laterals to lands owned by the Kuhns, installed four pumps and erected the necessary structures at the intake at the Sacramento River and constructed a system of drains and levees.

For the purpose of condemning certain rights of way necessary for the extension of the main canal, the Canal company, in 1909, or just prior thereto, filed in the Superior Court of the county of Glenn a

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number of complaints in eminent domain proceedings. One of the defendants demurred on the ground that the Canal company under its articles of incorporation, was not a public utility, and hence had no right to exercise the power of eminent domain. This demurrer was sustained. The Canal company thereupon amended its articles of incorporation, and filed the same on June 6, 1910. Under these amended articles the company was granted power, among others, "to purchase, acquire, lease, construct and build, own, hold, operate, maintain, enlarge, improve, extend and sell, lease, mortgage or otherwise dispose of real and personal property, notes, bonds, stocks and securities, canals, ditches, flumes, dams, reservoirs and lakes, natural or artificial, and other water works, or any interest therein with all convenient appliances for the diversion, storage, sale, rent, distribution and supply of water for irrigation for agricultural purposes and for mining and manufacturing, commercial or domestic purposes." The company was also granted power "to fix, charge collect, receive, use and enjoy tolls, rentals, rates or other compensation for any such water so sold, furnished, rented or distributed or for the use thereof or for any of the rights to enjoy the same which shall be granted or conferred by this company." After having thus amended its articles of incorporation so as clearly to give it public utility powers, the company filed amended complaints in a number of the proceedings in eminent domain heretofore referred to. Certified copies of these complaints are in evidence in the present proceedings. In each thereof the Canal company alleges that it is "a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the county of Glenn, in the State of California, and organized, among other things, for the purpose of storing, selling, renting, supplying and distributing water for irrigation and domestic use and for manufacturing and all other purposes and uses to which water may be put, to the farming neighborhoods in the counties of Glenn and Colusa, in the State of California, within the limits and area of land comprising said farming neighborhoods." Said lands and neighborhoods are described in these various complaints. The descriptions are not identical in all of them, but together they include most of the lands of the old Central Irrigation District, together with certain additional lands, embracing the larger part of the lands of the complainants in the present proceedings. Findings and judgments were thereafter entered in these proceedings, establishing the truth of the allegations of the amended complaints.

Reference has already been made to the case of *Byington et al.* vs. *Sacramento Valley West Side Canal Company et al.*, which was tried in the Superior Court of Colusa County in 1912. The complaint was filed

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by a number of land owners in the old Central Irrigation District owning lands south of the present completed portion of the main canal, who alleged that the Canal company is a public utility and that it is obligated to supply water to the lands of complainants. In this proceeding, as already indicated, the Canal company admitted, on the pleadings, and also at the trial "for the purpose of the case" that it is a public utility and the court so found.

Notwithstanding all the matters hereinbefore set forth, the Canal company now claims before this Commission that it is not a public utility, or, at least, that it is a hybrid water company, part public utility and part not a public utility. When pressed, the representatives of the defendant admitted in this proceeding that in so far as the company sells water to the customers of the old Central Canal and Irrigation Company, it is a public utility. At the same time, however, they contend, notwithstanding the matters hereinbefore set forth, that with reference to water delivered to all other consumers, the company is a private mutual water company, not subject to the jurisdiction of this Commission. How a corporation can take over a water system impressed with a public use and thereupon convert that system into a private system for the private advantage of the corporation to the exclusion of members of the public owning lands capable of irrigation and under the flow of the system and not consenting to the change, is beyond my understanding. I know of no such thing as a corporation which is at one and the same time both a public utility and not a public utility. Although the Canal company has treated its customers holding lands bought from the Kuhns as though the company were simply a private mutual water company, collecting its rentals by means of assessments, this conduct is not sufficient to authorize the conversion of a public water system into a private water system.

Under the definition of a public utility given by section 23 of article XII of the constitution of this State, as amended on October 10, 1911, the definition of a public utility as found in section 2 of the Public Utilities Act, the cleancut differentiation between a public utility water company and a private mutual water company established by chapter 80 of the laws of 1913, as well as under the Canal company's own amended articles of incorporation, its admissions and its conduct, as well as in view of the nature and character of the canal system and its waters at the time they were acquired by the Kuhns, I can not escape the conclusion that the defendant is a public utility and that the canal system which it is operating and the waters delivered through the same are still devoted to the public use. The attempt of the Kuhns to secure the control of a public utility water system for their own private purposes to the exclusion of other members of the public was foredoomed

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to failure, because it was legally impossible. The issue as to whether or not the defendant is a public utility must be resolved on the facts and the law applicable thereto, against the defendant.

I shall now address myself to the other issues presented in these proceedings.

The complaint in Case No. 673 is signed by forty-nine complainants. Permission was given at the trial to add to the complainants the following:

Boyd Millar, owning 86 acres on the River Branch canal.

Lacey-Williamson Company, owning 720 acres east of Willows.

L. Lindsey, owning sections 16 and 17 and the south half of section 9, township 18 north, range 3 west, totaling 1,560 acres.

Owen Dunlap, owning southwest quarter of section 6, township 19 north, range 2 west, 160 acres.

Charles Glenn, owning 800 acres on the River Branch canal.

George E. Fleming, owning northeast quarter of section 15, township 19 north, range 3 west, 160 acres.

William Spaletta, owning northwest quarter and north half of northeast quarter of section 25, township 19 north, range 3 west, 240 acres.

L. H. Twede testified that the name of Twede Ranch and Land Company, one of the complainants, had been signed by mistake. His request that this name be withdrawn from the complaint was granted. The complainants, Charles L. Donohoe and H. J. Barceloux, are owners of undivided interests in a 71-acre parcel of land in the northwest quarter of section 12, township 19 north, range 3 west.

No evidence was presented in behalf of S. Givens, T. H. Newsom, J. L. Bondurant, F. S. Reager, F. and C. Sturm, C. S. and Mary Jurges and Lena Ferem. James Arnold testified that he would not make an application for water, and N. Peterman testified that he did not know whether he wanted water or not. The testimony also shows that if water were served to the lands of Peterman and the Sturms, it would be necessary to incur an expenditure of $11,000.00 to enlarge the "B" canal as it now exists.

The complainants in Case No. 673, to whose claims consideration will be given in this proceeding, are as follows: Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Lloyd T. Lacy, Frank Spooner, William Schilling, M. C. Dethlefs, S. C. Pierce, J. J. Curry, W. H. Crook, H. Jameson, O. L. Raper, G. M. Hanson, A. D. Girard, D. R. Linebaugh, C. T. Dillard, J. E. Knight, J. W. Farmer, Mrs. A. C. Troxel, Mrs. L. M. Newsom, W. B. Baylor, George E. St. Louis, Henry E. Reed, A. E. Duncan, Frank Miller, C. R. Wickes, Edgar Hunter, John S. Figge, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, A. Gollnick, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Boyd

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Millar, E. E. Avery, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, Charles Glenn, George E. Fleming and William Spaletta.

While relief herein must be confined to those complainants in whose behalf evidence was presented, it is expected that the principles herein established will be applicable to all land owners who are in the same classes as the complainants designated in the order herein.

The testimony shows that it is physically possible to irrigate from the system of the Canal company all the lands of all complainants referred to in the order herein, with the following possible exceptions:

1. J. J. Curry; the testimony shows that the major portion, if not all, of the lands of Curry can be so irrigated.

2. W. H. Crook; the testimony shows that between 20 and 30 acres of this land can be so irrigated.

3. C. T. Dillard; between 10 and 12 acres of this land may be so irrigated.

4. Mrs. L. M. Newsom; the larger portion of Mrs. Newsom's land can not be so irrigated.

5. George E. St. Louis; over one-half of this 25-acre parcel can be so irrigated.

6. A. Gollnick; not more than 10 acres of this 51-acre parcel can be so irrigated.

Of the lands of complainants to which consideration is herein given, part are located within the boundaries of the old Central Irrigation District and part are located outside of the district, principally between the Sacramento River and the easterly boundary of the old district. The lands of the following complainants seem to be located within the boundaries of Central Irrigation District: Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Frank Spooner, William Schilling, A. D. Girard, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, George E. Fleming and William Spaletta. The lands of the other complainants referred to in the order herein seem to be located outside the limits of the old Central Irrigation District. In the case of certain of the complainants, the testimony is indefinite on the question as to how many acres the particular complainant desires to irrigate, what crops he desires to raise and when he desires the use of the water. A careful perusal of the evidence shows that water is desired by the complainants referred to in the order herein, approximately as follows:

For rice	7,483 acres
For alfalfa	2,615 acres
For alfalfa and trees	758 acres
For trees	45 acres

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Some of this acreage desires water during the first year, while the development of the remaining lands would extend over several years.

Under the decision of the Supreme Court in the *Byington* case, *supra*, the complainants who own land within the boundaries of the old Central Irrigation District are entitled to water from the Canal company, if the company has the water and is able to deliver it, and those complainants who own lands contiguous to but outside the limits of Central Irrigation District are entitled to water under the same conditions but only after the requirements for the irrigation of the lands within the district have been fully met and provided for.

It now becomes necessary to consider defendant's ability to deliver water to the lands of complainants.

As already stated, the Canal company has the right under its grant from the Federal Government to take from the Sacramento River, as long as such diversion shall not seriously injure the navigation of the river, an amount of water which shall not exceed 900 cubic feet of water per second when the river at the point of diversion stands two feet above low water. Mr. D. W. Ross, who was in actual charge of most of the construction work on defendant's system which was performed by Sacramento Valley Irrigation Company, estimates in defendant's Exhibit No. 18 that this amount of water would irrigate 90,000 acres, assuming an average depth of 1.5 feet of water per acre per year delivered on the land. Mr. R. W. Hawley, the Railroad Commission's hydraulic engineer, estimated that this amount of water would irrigate 100,000 acres of land, assuming a depth of 1.5 feet of water per acre during the year, of which amount 25 per cent would be applied during any 30-day period of the irrigation period in the summer. If the Federal Government should permit the taking of water in excess of 900 cubic feet per second, the system's capacity to deliver water could be very materially increased.

At the present time, however, due to certain limiting factors, to which attention will hereinafter be directed, defendant's system is not capable of irrigating acreages as large as those just indicated. Defendant's answer in Case No. 673 admits that the system is at present capable of irrigating 60,000 acres of land. Mr. Ross testified that if certain work were done on the main canal, this system could now irrigate 60,000 acres. Mr. Hawley testified that the system in its present condition could irrigate very nearly 46,000 acres.

The limiting factors in the ability of defendant at the present time to deliver water are stated by Mr. Ross in defendant's Exhibit No. 18, as follows:

1. The condition of the west branch of the Sacramento River from which the water is diverted.

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2. The capacity of the present pumping system.

3. The condition of the main canal between the river and Stony Creek.

4. The construction of better means for conducting the water across the channel of Stony Creek.

5. The reconstruction of the upper section of the main canal south of Stony Creek.

In 1909, more than 1,000 cubic feet of water per second flowed through the west channel of Sacramento River, past the point where defendant's pumps are installed. During the last few years, however, a gravel bar has gradually moved down this channel, making it necessary to dredge each year to maintain defendant's supply of water. While a channel can be maintained across this bar, Mr. Ross estimates that it will cost about $6,000.00 per year for dredging expense for several years to come, unless the river should, during some flood stage, change back to its original channel.

Mr. Ross estimates that with the pumps at present installed at the head of the canal, it would not be safe to count on a diversion in excess of 750 cubic feet of water per second, with all the pumps in operation, under favorable conditions of water supply. In order to pump the full 900 cubic feet of water per second, Mr. Ross advises the installation of two additional pumps, with a capacity of 150 cubic feet per second each, to be installed in the year 1920, at a cost of $59,000.00.

The main canal between the Sacramento River and Stony Creek, a distance of about six miles, contains considerable deposits of silt and portions thereof have not been excavated to grade. Mr. Ross reports that there are still obstructions in this section of the canal of an average height of more than three feet for a distance of nearly 3,000 feet. It is necessary at present to pump against this additional height. Mr. Ross estimates that it will be necessary to complete this section of the canal in 1917 or 1918 and that the work can be done for $64,812.00, not including overhead expenses.

The waters pumped from the Sacramento River are conducted by means of a concrete weir with removable wooden superstructure across the bed of Stony Creek, to the continuation of the main canal to the south thereof. The superstructure is removed at the end of each season to permit of the passage of the flood waters of Stony Creek during the winter and early spring, and the removal from the concrete base of the weir of the gravel deposited by the waters of Stony Creek. Each year the company must defer running the Sacramento River water through its system until the waters of Stony Creek have subsided sufficiently to enable teams to enter the creek bed and to remove the gravel there deposited. This method of operation is admittedly only temporary.

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Central Irrigation District constructed a conduit across Stony Creek at this point, but this structure has disappeared. Mr. Ross estimates that a suitable permanent structure for the purpose of carrying the waters of the Sacramento River to the south side of Stony Creek can be erected for about $100,000.00 and that this work should be done in 1917 or 1918.

As already stated, the main canal from a point about three miles northeast of Willows to its present southern extremity has been permanently constructed to grade by Sacramento Valley Irrigation Company. From the northerly extremity of this portion of the canal to Stony Creek, the canal is still, in the main, in the condition in which it was left by Central Irrigation District many years ago. Portions of the canal are not down to grade and other portions are badly choked with tules. Ultimately it will be necessary to complete this portion of the canal, so as to carry the full amount of water to which defendant is entitled. Mr. Ross estimates that the total cost of fully completing this section of the canal so as to enable it to carry the full capacity of water originally estimated would be $312,478.00, which amount includes engineering, administration and legal expenses. Mr. Ross is of the opinion that this work should be done in 1917 or 1918.

As contrasted with the acreage which may be irrigated by the Canal company's system in its present condition and the acreage which may ultimately be irrigated when the system has been fully completed, I desire to draw attention now to the acreage which has actually been irrigated by defendant during the last few years. This acreage is reported by the defendant as follows:

Year.	Acres irrigated
1910	3,448
1911	5,800
1912	16,111
1913	16,522
1914	12,265

The area irrigated in the year 1912 included 5,419 acres of grain lands belonging to Sacramento Valley Irrigation Company and apparently not subsequently irrigated. The acreage irrigated in 1914 includes about 210 acres which were planted to rice.

It will be noted that the maximum acreage of land hitherto irrigated, being 16,522 acres in the year 1913, is only slightly in excess of one-third of the capacity of the system even in its present condition, as testified to by Mr. Hawley, and only about one-sixth of the ultimate capacity of the system if constructed so as to utilize the full 900 cubic feet of water per second, which the defendant may at the present time take from the Sacramento River.

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I find from the evidence herein that defendant has under its control sufficient water to irrigate at least the lands of the complainants whose claims are being considered in these proceedings, as well as the complainants in the *Byington* case, in addition to its present customers, and that defendant's canal system in its present condition is capable of delivering water as required to the lands of all these complainants, with a considerable margin to spare for other lands if the portions of defendant's system are completed from time to time as advised by Mr. Ross.

This Commission must, in this proceeding, determine the rate which defendant must charge the complainants for water delivered. The complaint in the *Rogers* case (Case No. 597) alleging discrimination as to the rates at present charged by defendant to different consumers, also requires an investigation into defendant's rates. The defendant itself has petitioned the Commission in Case No. 673 to establish all its rates, if this Commission should find that the company is a public utility. It accordingly becomes necessary to investigate defendant's entire rate situation.

At the present time defendant is selling water in part to the so-called Central Canal and Irrigation Company contract holders and in part to its own stockholders.

Central Canal and Irrigation Company, admittedly a public utility, entered into contracts to sell water to various land holders at various prices. The form of contract at first used provided that water would be delivered at the rate of not exceeding one cubic foot of water per second for each 160 acres of land until the year 1953, and thereafter during the existence of the corporation, for the sum of $1.00 per acre per year, for each acre of land described in the contract, whether water was actually used or not. Central Canal and Irrigation Company later entered into one contract covering one parcel of land in which the rate was fixed at $1.50 per acre and several contracts in which the rate was fixed at $3.00 per acre for the first ten years, with $2.00 per acre annually thereafter. There is also some evidence that a few contracts provided for the payment of a rate of $2.00 per acre during the first ten years and $1.00 per acre thereafter.

When Sacramento Valley West Side Canal Company entered into possession of the system formerly operated by Central Canal and Irrigation Company, it took the system subject to all its outstanding burdens, including the outstanding contracts for the delivery of water. From time to time, as persons under contracts to purchase land found themselves unable to make payments at the times and in the amounts specified in their various contracts, Sacramento Valley Irrigation Company, the Kuhn Land Company, agreed to certain changes in the terms of the

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land purchase contracts, on condition that the rate to be paid for water to Sacramento Valley West Side Canal Company should be increased from $1.00 to $2.00 per acre per year. Almost all the $2.00 contracts now outstanding were thus entered into after the Kuhn people had secured control of the project and it may fairly be assumed that the rate thus established expressed the views of the new owners of the project as to the fair rate to be charged for water.

The number of acres under the Central Canal and Irrigation Company contracts as originally entered into or as modified, was testified at the hearing to be as follows:

$1.00 contracts	3,996.37 acres
$1.50 contracts	23.7 acres
$2.00 contracts	2,449.64 acres
$3.00 contracts	1,668.24 acres
Total	8,137.95 acres

The testimony shows that frequently one land owner pays $1.00 per acre per year, whereas his neighbor owning land of exactly the same character lying by the side of the first parcel pays $2.00 or $3.00 per acre. The charge of W. J. Rogers, complainant in Case No. 597, that defendant discriminates in its charges has been clearly sustained. That this Commission can not permit this discrimination to continue is obvious. The rates to be established in this proceeding must be uniform and non-discriminatory in their application.

In addition to supplying consumers under the so-called Central Canal and Irrigation Company contracts, Sacramento Valley West Side Canal Company also supplies water to certain of its stockholders. The agreements entered into between Sacramento Valley Irrigation Company and purchasers of land provide that Sacramento Valley Irrigation Company will assign and deliver to the purchaser one share of the capital stock of Sacramento Valley West Side Canal Company for each acre of land purchased, the water to become appurtenant to the land. The agreements further provide that the Canal company shall have the right to levy the necessary assessments upon its stockholders, these assessments to be paid by all the stockholders whether they use water or not. The agreements further provide as follows:

> "The company (Sacramento Valley Irrigation Company) prior to the year 1915 shall pay all such assessments, charges or expenses levied against the stock of the purchaser, if any, in excess of the sum of $1.50 per acre per annum."

The practice of the Canal company has been to subtract from the total maintenance and operating expenses of any particular year the

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amount of revenue collected from Central Canal and Irrigation Company contracts and then to divide the difference by the total number of shares of its stock outstanding. The quotient has then been assessed upon each acre of land represented by capital stock of Sacramento Valley West Side Canal Company, then outstanding, irrespective of whether water was being used upon the land.

In the year 1912, the Canal company collected the sum of $9,651.04 from Central Canal and Irrigation Company contract holders. After applying this amount to the cost of maintenance and operation for the year 1912, there was a deficit in maintenance and operating expenses of $77,514.02. There being 111,667.69 shares of capital stock of the Canal company outstanding, the assessment for the year 1912 was 70 cents for each share of the capital stock of the Canal company then outstanding. It follows that people who bought their land from the Kuhns and used water, secured it in 1912 for 70 cents per acre. The deficit was met by the Kuhns out of their land project.

In 1913, $9,711.38 was collected under the Central Canal and Irrigation Company contracts. There were certain other sources of revenue bringing the total amount collected from sources other than stockholders up to $10,167.38. This left a deficit in maintenance and operating expenses which was reported by the company as being $112,483.18. This amount was divided by 118,340.75, being the number of shares of the Canal company's stock then outstanding, resulting in an assessment of 95.025 cents per share. The cost of water to stockholders of the Canal company using it was thus 95.025 cents per acre.

The assessment for 1914 does not appear from the evidence.

Attention should be drawn to the fact that stockholders of the Canal company have been paying these assessments entirely irrespective of the question of whether they were or were not actually using water for irrigation.

It now becomes necessary to consider the investment in the Canal company's property.

The Canal company presented as its Exhibit No. 5*a* a statement of total investment by the present owners of the system of the Canal company. This statement is as follows:

TABLE NO. I.

Investment by Present Owners of System of Sacramento Valley West Side Canal Company.

Central Irrigation District bonds—amount paid	$331,823 59
Central Canal and Irrigation Company—amount paid	223,272 00

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Cost of Construction Done by Sacramento Valley Irrigation Company.

Main canal grading		$176,923 54	
Main canal structures		237,365 62	
Lateral grading		422,848 49	
Lateral structures		278,120 19	
Lateral system concrete pipe	$31,132 53		
Less cost of pipe over estimated cost of open ditches	23,047 53		
		8,058 00	
Pumping plant machinery		123,759 41	
Drains		241,134 98	
Levees	$73,340 39		
Less payments by land owners	15,294 11		
	$57,046 28		
One-half chargeable to protection of irrigation system	28,523 14		
		28,523 14	
Telephone system construction		7,934 97	
Telephone system maintenance during construction		1,570 65	
Power line, Hamilton City to Stony Creek		1,249 74	
Automobiles		4,181 25	
Wagons and harness		5,901 45	
Dredge "Delevan" and equipment		15,546 90	
Depreciation on construction equipment		54,848 70	
Rights of way purchased		30,935 93	
Lateral rights of way purchased		70,570 22	
Rights of way for canal system on Sacramento Valley Irrigation Company's land—2,325 acres occupied at $150.00	$348,976 50		
Less amount paid	70,570 22		
		278,406 28	
Total amount expended by Sacramento Valley Irrigation Company on canal construction			$1,987,004 46
			$2,543,000 05
Overhead expenses during construction:			
Organization		$3,596 63	
Engineering and superintendence		296,672 85	
Salaries of clerks		49,549 34	
Salaries of legal department		10,662 32	
			359,481 14
Beckwith judgment			87,116 65
Discount on bonds 15 per cent			$2,989,597 84 448,439 67
			$3,438,037 51

The first item, being "Central Irrigation District Bonds," and totaling $331,823.59, is the amount paid by the Kuhns for the entire outstanding bonds of the old Central Irrigation District, with accrued interest. The second item, "Central Canal and Irrigation Company, $223,272.00," is the amount paid by the Kuhns for the entire property of Central Canal and Irrigation Company. The remaining amounts

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shown in the exhibit are given by the Canal company as representing the amounts of money expended on the irrigation system by Sacramento Valley Irrigation Company or Sacramento Valley West Side Canal Company subsequent to the acquisition of the property by the Kuhns, with an allowance of 15 per cent claimed by the company as estimated discount on bonds. That this statement does not represent correctly the amounts actually expended by Sacramento Valley Irrigation Company appears from the fact that the statement includes an item of 2,325 acres of right of way at $150.00 per acre, which amount is largely in excess of the amount actually paid by the Kuhns for the land. The statement also includes items for laterals which apparently have never been deeded by Sacramento Valley Irrigation Company to the Canal company. The statement also includes the item of "Drains, $241,134.98," which item Mr. Hawley considers should be properly chargeable against the land operations of the Kuhns and not against the irrigation system. The statement does not purport to enter into the question of title to the property as between Sacramento Valley Irrigation Company and the Canal company.

Mr. R. W. Hawley presented a tabulation showing his estimated cost of the property of the canal company as of January 1, 1915, which estimate was introduced as Railroad Commission's Exhibit No. 4. The estimate is as follows:

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TABLE NO. II.

Estimated Cost of Public Utility Property of Sacramento Valley West Side Canal Company.
R. W. HAWLEY.

Built by—	Excavation	Structures	Damages, rights of way, etc.	Sub-total	Overhead	Overhead, per cent		Total
						Including right of way	Excluding right of way	
Main canal:								
By C. I. District	$328,235 00	$37,000 00	$10,225 00	$375,460 00				
By C. C. & I. Co.	56,549 00	78,954 00	888 00	136,391 00				
By S. V. I. Co.	159,202 00	234,622 00	30,936 00	424,760 00				
Totals	$543,986 00	$362,826 00	$42,049 00	$936,611 00				
Pumping plants:								
By C. C. & I. Co.		$17,179 00		$17,179 00				
By S. V. I. Co.		115,007 00		115,007 00				
Totals		$132,186 00		$132,186 00				
Laterals:								
C. C. & I. Co.	$50,000 00	$26,528 00		$76,528 00				
S. V. I. Co.	422,849 00	278,120 00	$174,400 00	785,369 00				
Totals	$472,849 00	$304,648 00	$174,400 00	$951,897 00				
Levees, etc.—S. V. I. Co.:								
Concrete pipe		$8,085 00		$8,085 00				
Levees	$28,523 00			28,523 00				
Beckwith judgment			$87,117 00	87,117 00				
Totals	$28,523 00	$8,085 00	$87,117 00	$123,725 00				
Overhead:								
C. I. District—known				$160,460 00	$14,460 00	9.56	9.86	$504,920 00
C. C. & I. Co.—estimate				241,098 00	33,614 00	15.00		280,712 00
S. V. I. Co.—known				1,538,861 00	427,385 00	27.76	34.18	1,966,246 00
S. V. I. Co.—engr. alone					270,849 00	17.60	21.70	
Grand total								$2,751,878 00

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In this tabulation Mr. Hawley has undertaken to give the actual expenditures incurred by Central Irrigation District, Central Canal and Irrigation Company and Sacramento Valley Irrigation Company, with estimates in a few cases in which the actual cost could not be secured. Mr. Hawley has eliminated certain structures which were erected by Central Irrigation District but which have since been obliterated or replaced. Mr. Hawley included no allowance for drainage canals for the reason that in his judgment this item, as already indicated, is properly chargeable to the land operations of the Kuhns and not to the irrigation system. He made a segregation of the cost of levees, partly to the land business and partly to the irrigation operations, adopting in this respect the segregations used by the Canal company. He included the cost of laterals, the title to which is probably still in Sacramento Valley Irrigation Company. While reporting the percentages for overhead construction claimed to have been expended by Sacramento Valley Irrigation Company and the Canal company, Mr. Hawley draws attention to the fact that the percentages are unusually high, particularly for engineering and superintendence. Mr. Hawley stated that the sum of $10,225.00 under the head of damages, rights of way, etc., under the Central Irrigation District, should be increased to $34,539.00, which correction should be made in the foregoing table.

Mr. E. C. Mills, defendant's chief engineer, presented an estimate of reproduction cost of defendant's main canal, as follows:

Rights of way: 1,039 acres at $150.00 per acre	$155,850 00
Excavation costs	750,886 00
Structures	307,616 00

I am satisfied that the allowances claimed by defendant for rights of way are excessive, but it is unnecessary, on the facts of these proceedings, to pursue this subject further.

Mr. Ross estimated (defendant's Exhibit No. 18) that it would cost $1,223,218.00 to reproduce the irrigation system as it stood at the time it was purchased by Sacramento Valley Irrigation Company. How little assistance estimates of reproduction cost and even statements of moneys actually expended on this system render in determining the real value thereof is shown by the fact that at the time the Kuhns purchased Central Canal and Irrigation Company's stock, they expressed themselves as considering it to be practically worthless. They refused to take the canal independent of the lands which became a part of their project and bought the canal principally for the purpose of developing their lands.

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For reasons which will hereinafter appear, it is not necessary in this proceeding to place an exact value on the property of the Canal company.

Mr. Ross testified concerning a value to be placed upon the water rights owned by the Canal company, but states in defendant's Exhibit No. 18, that no interest on any estimated value of water rights is claimed until sufficient revenues can be derived to cover the cost of maintaining and operating the system, together with interest on the amount actually invested. Neither the Federal Government nor the State of California made any charge for the water rights claimed by the Canal company. It is unnecessary in the present proceeding to give further consideration to any value to be allowed for defendant's water rights.

Mr. R. W. Hawley presented a statement, which was introduced and marked Railroad Commission's Exhibit No. 2, showing the amounts claimed by the Canal company, as shown by its books, to have been expended for maintenance and operation from November, 1910, to November, 1914, inclusive, except the month of November, 1913. This statement is as follows:

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TABLE NO. III.

Maintenance and Operating Expenses According to Books of Sacramento Valley West Side Canal Company.

	Canal Co. Account No.	5,800 acres, 1910-1911, Nov. to Oct.	16,906 acres, 1911-1912, Nov. to Oct.	16,111 acres, 1912-1913, Nov. to Oct.	12,265 acres, 1913-1914, Dec. to Nov.
Maintenance:					
Main canal, cleanings, etc.	1	$4,410 44	$2,896 36	$4,844 17	$3,698 62
Main canal, intake channel	1a		1,288 59	554 92	4,948 92
Main canal, structures	2	526 78	5,691 96	3,891 98	3,138 35
Main canal, opening and closing flood gates	2a	10,171 68	326 60	2,385 72	2,136 46
Lateral cleaning	3		17,750 73	34,403 37	16,128 12
Lateral structures	4	397 26	4,007 61	5,792 64	952 01
Maintenance pipe, lateral system	4a			1,513 52	13 39
Betterment work, permanent repairs	4c				5,562 56
Repairs to tools and machinery	6	9 10	22 62	10 00	614 07
Stony Creek weir	6a			292 72	981 88
Concrete check, river branch canal	6b			788 29	
Repairs to roads	17	177 70	682 96	9 96	20 25
Drainage system	19			1 27	1,077 33
Levees	20			260 00	718 13
Totals		$15,692 96	$32,667 43	$54,738 56	$39,990 09
Operation:					
Salaries and expense of engineers	5	$2,392 50	$2,983 34	$3,106 85	$3,197 84
Pump plant, repairs to buildings	7	69 23	261 81	1,056 12	760 41
Pump plant, repairs to machinery	8	17 05	1,529 06	2,607 88	3,567 06
Pump plant, wages of attendants	9	1,684 94	3,819 21	1,922 84	1,336 96
Pump plant, power	10	3,737 00	11,384 88	13,611 86	10,277 69
Pump plant, miscellaneous supplies	11	372 21	794 85	242 31	311 47
Telephones	12	299 70	445 39	879 84	681 68
Telephone system M-O	12a			113 54	2,601 17
Ditch riders	13	6,044 06	10,491 08	9,391 26	5,903 77
Miscellaneous	14	178 07	2,574 19	666 85	11 56
Operation main canal structures	11a			33	50 64
Totals		$14,794 76	$34,282 81	$33,599 68	$28,700 25

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General:					
Automobile operations	16	$1,237 50	$2,659 50	$1,997 38	$2,243 73
Office equipment	22		3 75	389 64	
Field equipment	23		1,536 51	5,250 87	1,977 66
Salaries of general officers	25	4,761 50	5,611 69	5,945 75	3,766 75
Salaries of clerks	26	2,215 00	4,258 30	4,262 27	3,499 61
Printing and stationery	27	268 83	507 61	548 82	221 14
Miscellaneous office expense	28	1,560 44	1,900 78	2,303 19	886 54
Storeroom expense	29	49			
Miscellaneous equipment repairs	30		5 10		
Advertising and attractions	31				
Miscellaneous general expense	32	264 00	189 33	105 10	2,128 66
Salaries of legal departments	35	641 95	541 74	767 00	619 85
Insurance	38				969 75
Taxes	39	1,709 93	3,000 51	5,260 05	6,665 09
Totals		$12,659 64	$20,214 82	$26,660 07	$22,978 78
Grand total		$43,147 36	$87,165 06	$114,998 31	$91,669 02

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Mr. Hawley also presented an estimate of reasonable maintenance and operating expenses, sufficient for the irrigation of up to 19,000 acres, which estimate is as follows:

TABLE NO. IV.

Estimate of Annual Maintenance and Operating Expenses.

R. W. HAWLEY.

Maintenance:		
Main canal, 50 miles at $100.00	$5,000 00	
Laterals, 300 miles at $60.00	18,000 00	
Power plant	3,000 00	
Telephone system	500 00	
Equipment	200 00	
Levees	300 00	
Pipe system	100 00	
Intake channel, 100,000 cubic yard at 6 cents	6,000 00	
		$33,100 00
Operation, 7-month period:		
Main canal, 53 miles	$1,785 00	
Three tenders at $85.00.		
Laterals, 300 miles.		
Ten tenders at $85.00	5,950 00	
Three foremen at $100.00	2,100 00	
One superintendent at $175.00	1,225 00	
One-half engineer at $250	875 00	
Pump plant, 2 all, 3 one-half times at $90.00	1,575 00	
Floodgates	2,000 00	
Power (for 16,000 acres or more)	12,000 00	
Replacement of equipment	1,000 00	
Transportation of officials—autos	1,500 00	
		30,010 00
General:		
Salaries—		
General manager	$3,600 00	
Clerks	2,400 00	
Transportation autos	1,000 00	
Legal expenses	1,200 00	
Supplies, etc.	600 00	
Rental, office	600 00	
Insurance, liability 3 per cent on $30,000+ or —	900 00	
Taxes	6 000 00	
		16,300 00
Total		$79,410 00

In this estimate, Mr. Hawley omits certain items appearing in the company's books under the head of "maintenance and operation," for the reason that in his judgment the items referred to are properly chargeable to capital account or to depreciation and not to maintenance and operation. He also takes an average of expenses over the last few years with reference to certain items as to which the expenditures as reported for 1914 appear to be abnormal.

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Mr. Ross, in defendant's Exhibit No. 17, presents a statement of maintenance and operating expenses representing in part the expenditures hitherto incurred, as claimed by the company, and in part an estimate of expenses hereafter to be incurred up to and including the year 1925, on an assumed development of the land in such a way that 90,000 acres will be taking water by the year 1925. Mr. Ross' computation is as follows:

TABLE NO. V.

Estimated Maintenance and Operating Expenses.

D. W. Ross.

Year	Maintenance and operating expense	Number of acres irrigated	Maintenance and operating expense per acre
1910	$18,421 00	3,448	$5 35
1911	43,147 00	5,800	7 44
1912	87,165 00	16,111	5 41
1913	114,998 00	16,111	7 14
1914	91,669 00	12,265	7 43
1915	125,000 00	19,000	6 50
1916	130,000 00	26,000	5 00
1917	140,000 00	33,000	4 25
1918	145,000 00	41,000	3 50
1919	150,000 00	48,000	3 02
1920	150,000 00	55,000	2 73
1921	150,000 00	62,000	2 42
1922	152,000 00	69,000	2 10
1923	152,000 00	76,000	2 00
1924	166,000 00	83,000	2 00
1925	180,000 00	90,000	2 00

The figures for the years 1910 to 1914, inclusive, are assumed to be the actual figures from the company's operations for those years. The figures for the years subsequent to 1914 are estimates.

The Canal company has kept no depreciation account. The only evidence in the record as to the sum proper to be set aside each year for depreciation was the rough estimate by Mr. Hawley of $20,000.00 per year on the straight line method.

Before making a finding as to just and reasonable rates to be charged by the Canal company, it will be necessary to consider several matters arising out of the particular facts in this case.

I have already drawn attention to the fact that this canal system is capable, in its present condition, according to Mr. Hawley's estimate, of irrigating 46,000 acres of land and of irrigating when completed 100,000 acres, but that the actual acreage irrigated in the year 1914 was only 12,265 acres. In answering the question whether the canal system as at present constructed bears a reasonable relation to the acreage at present served from the canal, Mr. Hawley testified that, in

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his opinion, the canal system is entirely out of proportion to the number of acres served. He further testified that, in his opinion, the system is very much overbuilt for the present demands made upon it. If a canal system is built large enough to serve 100,000 acres of land and during the first few years only 1,000 acres of land actually take water from the system, it must be evident that it would be unreasonable to expect those 1,000 acres to pay a return on the entire investment. In fact, it may well be that no rate which the owners of those 1,000 acres can reasonably afford to pay will be sufficient to meet even maintenance and operating charges. If the owners of a large area of land desire to build an irrigation system sufficiently large to irrigate the entire acreage, or a considerable portion thereof, so as to enable them to sell their land at a material profit, they certainly have the right to do so. However, if the irrigation system thus constructed is a public utility, the owners thereof have no right to expect that those who take water from it during the first few years will meet the entire burdens of the system.

This principle was clearly established by the Supreme Court of the United States in *San Diego Land and Town Company* vs. *Jasper,* 189 U. S. 439, a water rate fixing case which originated in San Diego County, California. In that case, at page 446, the Supreme Court declared that,

> "The supervisors, in determining the rates, assumed that the amount of water available for outside irrigation, apart from the amount used and paid for by National City was enough for a little over 6,000 acres, and on that point there is no serious dispute. Then they fixed the rate as if the company supplied these 6,000 acres, although such was not the fact. Of course, the amount actually received for the water actually furnished was correspondingly less than the receipts as estimated by the supervisors upon their assumption. . . . If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the constitution requires that, say, two-thirds of the contemplated number should pay a full return."

The same principle was applied in *Southern Pacific Company* vs. *Bartine,* 170 Fed. 725, in which case, at page 767, the court said:

> "If a railroad is built into a new, sparsely settled territory, with a view of serving a large future population and developing business, the constitution does not require the few people and the small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

In the present case it is as impossible from a practical point of view as it is unjust from an ethical point of view to expect the limited number of consumers of water under defendant's irrigation system to pay the

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entire cost of running the system. It is the experience of all irrigation projects of large extent that during the first few years the revenues derived from the sale of water are not sufficient to pay even maintenance and operating expenses. It is for this reason primarily that quasi-public irrigation districts are formed, which districts have the right to tax all the lands therein, both those which take water and those which do not take water, for the purpose of constructing, maintaining and operating the system. But when investors acquire an irrigation system in a case in which the water and the system have been dedicated to a public use, they can not expect to be able to keep those waters exclusively for their own private lands which they are developing and trying to sell to advantage and thereafter, when this plan fails, as legally it must, expect to be able to compel the relatively few purchasers who have settled on their lands to pay the entire cost of running the system. It is to the advantage, however, of the Sacramento Valley Irrigation Company or its successor to make up the deficits in the operation of the canal system, as they have been doing in the last few years, for the purpose of keeping up an irrigating system as an aid in the sale of their lands at a handsome profit.

Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public.

In *Covington & L. Turnpike Road Co.* vs. *Sanford,* 164 U. S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates to be charged by the Covington & Lexington Turnpike Road, as established by the General Assembly of Kentucky. At page 596, Justice Harlan says:

> "The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

Again, on the same page:

> "If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public."

In the leading case of *Smythe* vs. *Ames,* 169 U. S. 464, the same learned justice, at page 547, says:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the

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other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay.

In the present case, most of the purchasers of land from the old Sacramento Valley Land Company, securing the water from Central Canal and Irrigation Company, were induced to settle upon the land under agreements that they would receive water for one dollar per acre per annum. When the Kuhn people later made new arrangements, through the Sacramento Valley Irrigation Company, with as many of these people as they could induce to do so, they established a rate of two dollars per acre. Witness after witness in the present proceedings testified that he could not afford to pay more than one and one half or two dollars per acre for purposes other than the cultivation of rice and that if a rate were established in excess of two dollars per acre, the witness would either pump water or use none at all. While the testimony of witnesses as to what they can reasonably afford to pay for a utility service, is not necessarily conclusive on that point, because of their obvious self-interest, I find on the facts of these proceedings, that consumers under this system can not reasonably afford to pay for water more than $2.00 per acre, assuming a use of 1½ feet of water per acre, except for the cultivation of rice, to which special attention will hereinafter be given.

Obviously, it would be absurd to establish a rate so high that present or intending consumers under the system using their lands for the purposes for which they can be utilized, could not reasonably afford to pay it. The effect of such an order would simply be to take from the Canal company a large part, if not all, of the relatively few consumers whom the company has been able to secure.

I have already indicated that complainants in this proceeding desire water for approximately 7,000 to 7,500 acres of rice. In the year 1914, some 210 acres under the defendant's system were planted to rice under special arrangements, under which the company agreed to supply water up to five acre feet per acre at the rate of $7.00 per acre. It was provided that the water would be supplied for the season of 1914 only and that no right to water for subsequent seasons should arise from this arrangement. The results from this experience were so flattering that a large number of land owners under defendant's system now desire the use of water for the cultivation of rice. The lands to be utilized

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for this purpose are largely so-called "goose lands," which are low-lying, marshy lands, hitherto of but slight value, and not suitable for the cultivation of other crops.

Much more water is needed for the cultivation of rice than for either trees or alfalfa. One of defendant's witnesses estimated that 6.8 feet per acre were used by Sacramento Valley Realty Company on its land in 1914. No accurate measurement was taken and the estimate is not such as to inspire confidence in its accuracy. Mr. William Durbrow estimated that 5 feet per acre would be a usual and reasonable amount. Mr. R. W. Hawley estimated about 4½ feet. The testimony shows that at Gridley about 5¼ feet are used. The much larger amount of water used for rice must be taken into consideration in establishing the rate to be charged by defendant for water for rice lands.

Defendant objects to the sale of water for rice lands on the ground that the same amount of water which is necessary for the irrigation of one acre of rice could irrigate three or four acres of fruit trees and several acres of alfalfa, and further, on the ground that people do not usually care to build homes where land is flooded during a large portion of the year and that the cultivation of rice would not tend to the highest community development. Whatever theoretical merits there may be in this point of view, defendant's greatest need is to secure enough revenue to enable it to operate its system. The cultivation of rice will be a profitable buiness from the point of view of the sale of water and will result in largely increased revenues immediately available to defendant.

Reference has already been made to the holders of contracts from Central Canal and Irrigation Company. At an adjourned hearing held in Willows on April 6, 1915, a large number of these contract holders appeared before the Commission and protested against any increase in rates over the rates specified in their contracts. Most of these protestants are $1.00 contract holders. They claimed that by reason of the fact that they were accorded a right to receive water and that they had to pay for this water only $1.00 per acre per year, they paid from $30.00 to $50.00 per acre for their land in excess of what they otherwise would have paid. The matter of this Commission's power to pass on water rates established in contracts of this character was exhaustively considered by this Commission in Decision No. 536, rendered on March 28, 1913, in Application No. 118, in the matter of the application of *Murray and Fletcher* for an order authorizing an increase in water rates (Vol. 2, Opinions and Orders of the Railroad Commission, page 464. The same subject in its application to other utility rates as well as water rates was again considered

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by this Commission in its Decision No. 1309, in Case No. 483, decided February 27, 1914, *Town of Ukiah* vs. *The Snow Mountain Water and Power Company* (Vol. 4, Opinions and Orders of the Railroad Commission, page 293). Under the authorities referred to in these two cases, there can be no doubt as to the Commission's power over rates thus established. Both parties to a contract establishing a rate to be charged by a public utility will be presumed to have entered into the contract subject to the power of the State, under its police power, to supervise and regulate the utility whenever the State determines so to do, and to establish just and reasonable rates to be charged by the utility, including such rates as might have been established by contract.

That the $1.00 rate is an impossible rate is shown by the fact that even if 90,000 acres of land were irrigated under this system, being the maximum development for 900 cubic feet of water per second, as estimated by Mr. Ross, the sum of $2.00 per acre would have to be paid for maintenance and operating expenses alone, as estimated by Mr. Ross, without taking into consideration any return on the investment or any allowance for depreciation. Of course, if over 90,000 acres are finally irrigated, the expense of maintenance and operation per acre would be somewhat reduced. In the year 1913, assuming that the company's claim of $114,998.00 for maintenance and operating expenses is correct, the average cost for maintenance and operation for the 16,111 acres under irrigation in that year was $7.14 per acre. In 1914, assuming that Mr. Ross' figures of $91,669.00 for maintenance and operation are correct, the cost for maintenance and operation alone for each of the 12,265 acres irrigated during that year was $7.43 per acre. Assuming the correctness of Mr. Hawley's estimate of $79,410.00 for maintenance and operation, the cost for this item alone for 1914 was $6.47 per acre. While it is true that the present limited number of consumers can not be expected to bear the entire burdens of the system, as already indicated, it is also true that if the present system were donated to them outright, some means would have to be provided for meeting at least maintenance and operating expenses. Furthermore, the fact that contracts were improvidently entered into by the former utility, the Central Canal and Irrigation Company, under which, if extended over the entire system, it would be absolutely impossible to operate the system, should not prevent the present consumers under those contracts from having their rate increased to a fair and reasonable rate. A number of consumers under this system took this point of view and testified that they would be willing to pay a reasonable rate, but that they hoped it would not exceed $2.00 per acre for crops other than rice. Referring directly to the contention that land owners paid from $30.00 to $50.00 per acre in excess of what they would have paid for the land

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without water, it is sufficient to point out that Central Canal and Irrigation Company was a public utility and that under the decision of the Supreme Court in the *Byington* case, *supra*, the operator of this water system has no right to charge for a water right. While the purchasers of land under this system may not have realized their legal right to demand water without payment for a water right, their alleged excess investment of $30.00 to $50.00 per acre must be charged either to their ignorance of the law (however excusable) or to their land investment. They could not expect to receive water indefinitely at rates so low as to make the continued operation of the system impossible. With reference to the purchasers of land from the Kuhns, it will be sufficient to point out that the agreement of the Kuhns to meet the deficits in the cost of water delivered extended only to 1915.

After a careful consideration of all the evidence in these cases, I find as a fact that the following rates are fair and reasonable rates to be charged by Sacramento Valley West Side Canal Company for water:

(1) *Flat rates.* For rice, $7.00 per acre per annum; for all other crops, $2.00 per acre per annum; or

(2) *Measured rates.* Where water is measured, the rate shall be $2.00 per acre per annum for the use of 1½ feet per acre during the irrigating season, with an additional charge of $1.50 per acre foot per annum for each acre foot used in excess of 1½ acre feet.

The measuring device may be installed at the option of the Canal company, in which event the cost thereof must be borne by the Canal company, or it may be installed at the option of the consumer, in which event the consumer will pay the cost thereof.

As a public utility water company can charge only for water which it actually delivers, the result of the decision herein will be that henceforth no payments need be made to the Canal company except for water actually used. Those persons who have been paying, year by year, for water which they did not use, will henceforth be relieved of that liability.

The rates herein established will automatically take care of the complaint of discrimination raised by Mr. Rogers in Case No. 597.

The rates herein established assume the construction of necessary additional laterals at the expense of the land owners, in accordance with the Canal company's standard specifications, and the maintenance and operation thereof by the Canal company at the Canal company's expense. These conditions are in accord with the practice hitherto prevailing under this system and apply to the particular facts herein shown to exist. In a case in which the Canal company's burdens are already so heavy, it would be unreasonable to ask the company to go to the further expense of constructing the laterals. Laterals paid for by the land owners will belong to them.

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If the right of eminent domain must be exercised to acquire rights of way, the construction work will naturally be done by the Canal company, which may in such case demand an adequate deposit in advance before incurring expense.

In this opinion the situation has been examined and the facts have been set forth in much greater detail than would otherwise have been done, for the reason that the Commission desires to do all in its power to state the facts clearly to the people of Glenn and Colusa counties, so that they may have a solid foundation on which to act in case they should desire themselves to acquire and operate the Sacramento Valley West Side Canal Company's water system. Attention has been drawn to the fact that it has generally been found desirable in the development of large irrigation projects in California to form an irrigation district, so that the entire land in the district, the value of all of which is enhanced by the possibility of securing water, may bear its fair share of the burdens of the system, particularly during the early years when the revenues are always insufficient to run the system. If the people of Glenn and Colusa counties should in their wisdom adopt this solution of the extremely difficult problem which has confronted them for more than thirty years, and if the facts herein presented in considerable detail shall prove to be of assistance in this undertaking, the Commission will feel that its labors in these cases have not been in vain.

Subsequent to the submission of these two cases, William F. Fowler was appointed by the United States District Court for the Northern District of California, as receiver of the property of Sacramento Valley West Side Canal Company. On June 4, 1915, the Railroad Commission thereupon made its order herein, directing that William F. Fowler, as such receiver, be added as a party defendant in these proceedings.

I submit the following form of order:

ORDER.

Public hearings having been held in the above entitled proceedings, and evidence and briefs having been presented by all parties thereto, and a personal inspection of the more important properties of Sacramento Valley West Side Canal Company having been made by the Commissioner who presided at the hearings, and these proceedings having been submitted and being now ready for decision;

The Commission hereby finds as a fact that the rates herein established are just and reasonable rates to be charged by Sacramento Valley West Side Canal Company and by William F. Fowler, receiver of the property of said company, for water and that the existing rates of said company are unjust and unreasonable in so far as they differ from the rates so established.

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The Commission further finds as a fact that the lands of the complainants hereinafter specified are all under the flow of the canals of Sacramento Valley West Side Canal Company, except to the limited extent pointed out in the opinion which precedes this order, and that Sacramento Valley West Side Canal Company and William F. Fowler, receiver of the property of said company, have available a sufficient supply of water and have in operation a system of pumps, headworks and canals of capacity sufficient to enable said company and the receiver of the property of said company to supply water, as required, to the complainants hereinafter specified, in addition to its present consumers and the complainants in the case of *Byington* vs. *Sacramento Valley West Side Canal Company, supra,* decided by the Supreme Court of California on April 29, 1915.

Basing its order on the foregoing findings of fact and on each further finding which is contained in the opinion which precedes this order, the Railroad Commission hereby makes its order as follows:

1. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby ordered to supply water to the lands, as described in the complaint and the evidence herein, of the following complainants:

Sacramento Valley Realty Company, California Midland Realty Company, Charles L. Donohoe and H. J. Barceloux, Frank Spooner, William Schilling, A. D. Girard, M. S. Hess, Frank Shotts, Blanche Durbrow, F. M. Temple, Peter Barceloux Company, Estate of P. R. Garnett, H. W. Garnett, Lacey-Williamson Company, The Spalding Company, L. Lindsey, Owen Dunlap, George E. Fleming and William Spaletta—to the extent to which application may be made by the owners of said lands upon Sacramento Valley West Side Canal Company or William F. Fowler, the receiver of the property of said company, within a period of two years from the date of this order. While the Commission does not preclude itself from hereafter extending this period, it desires to indicate its opinion that demand for water must be made by these complainants within a reasonable time.

2. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby ordered to supply water to the lands as described in the complaint and the evidence herein of the following complainants:

Lloyd T. Lacy, M. C. Dethlefs, S. C. Pierce, J. J. Curry, W. H. Crook, H. Jameson, O. L. Raper, G. M. Hanson, D. R. Linebaugh, C. T. Dillard, J. E. Knight, J. W. Farmer, Mrs. A. C. Troxel, Mrs. L. M. Newsom, W. B. Baylor, George E. St. Louis, Henry E. Reed, A. E. Duncan, Frank Miller, C. R. Wickes, Edgar Hunter, John S. Figge, A. Gollnick, Boyd Millar, E. E. Avery and Charles Glenn—to the extent to which application may be made by the owners of said lands

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upon Sacramento Valley West Side Canal Company or William F. Fowler, the receiver of the property of said company, within a period of two years from the date of this order, but only to the extent to which said lands are under the flow of the canals of Sacramento Valley West Side Canal Company, as pointed out in the opinion herein, and only after Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, have met the requirements of their present consumers, the complainants designated in paragraph 1 of this order, the plaintiffs in the *Byington* case, and other land owners owning lands within the limits of the old Central Irrigation District, who may make application for water to Sacramento Valley West Side Canal Company or to William F. Fowler, the receiver of the property of said company, within two years from the date of this order.

3. Such additional laterals as may be necessary to serve the lands of complainants herein shall be constructed at the expense of the land owner and according to Sacramento Valley West Side Canal Company's standard specifications, but shall be operated and maintained by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, at their sole expense. Laterals paid for by the land owners shall belong to them.

4. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby directed to establish and file with the Railroad Commission within thirty (30) days from the date of the order herein, the following rates to be charged by them for water:

Flat rates. For rice, $7.00 per acre per annum; for all other crops, $2.00 per acre per annum; or

Measured rates. Where water is measured, the rate shall be $2.00 per acre per annum for the use of one and one-half (1½) feet per acre during the irrigating season, with an additional charge of $1.50 per acre foot per annum for each acre foot used in excess of one and one-half (1½) acre feet.

The measuring device may be installed at the option of the Canal company or the receiver of its property, in which event the cost thereof must be borne by them, or it may be installed at the option of the consumer, in which event the consumer will pay the cost thereof.

5. Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, are hereby directed to prepare and file with the Railroad Commission, within thirty (30) days from the date of this order, reasonable rules and regulations to govern the service of water by them to their consumers. The Commission will thereafter, by supplemental order, establish what it may find to be reasonable rules and regulations for the service of

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water by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company.

6. Compliance by Sacramento Valley West Side Canal Company and William F. Fowler, the receiver of the property of said company, with each provision of the order herein shall be a condition precedent to the exercise by said company and by said receiver of its property, of any rights under this order. No increased rates can be charged or collected by them under this order unless they comply with all the other provisions thereof.

7. In all other respects, the complaints herein are hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2484.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR PERMISSION TO ISSUE FIRST REFUNDING MORTGAGE BONDS SUFFICIENT TO NET EIGHT HUNDRED THOUSAND FIVE HUNDRED FIFTY-SIX DOLLARS AND NINETY-NINE CENTS.

Application No. 1702.

Decided June 14, 1915.

Applicant having expended in betterments and improvements to its system, the sum of $800,556.99 applies for and is granted permission to issue $910,000.00 face value of its 4 per cent refunding mortgage bonds to be sold at not less than 88, proceeds to be used only to reimburse treasury for such expenditures. Southern Pacific Company authorized to guarantee the payment of bonds herein authorized.

Guy V. Shoup, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

Southern Pacific Railroad Company and Southern Pacific Company report the expenditure of $800,556.99 during the six months ending December 31, 1914, for additions and betterments.

Under the terms of applicant's first refunding mortgage, heretofore filed in Application No. 1340 and marked Exhibit "A," Southern Pacific Railroad Company is entitled to draw down from its trustee

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enough bonds to cover such expenditures at the average market price for said bonds on the New York Stock Exchange. The expenditures in the sum of $800,556.99 were made from income of Southern Pacific Railroad Company, and these expenditures have not heretofore been covered by an issue of securities, nor has the company been reimbursed for this outlay. The additions and betterments comprising the total of $800,556.99 are set forth by the applicant as follows:

Tracks.	
Port Costa to Sacramento, double tracking	$ 60,190 89
Between Ventura Junction and La Crosse, relocate 2¼ miles of track	39,711 09
Total	$ 99,901 98
Bridges.	
Between Ventura and Dulah, two additional spans over Ventura River	$ 24,786 62
Neponset, steel span over Salinas River	20,123 28
Trestle 372-*a* (near Santa Barbara), renew	2,767 61
Total	$ 47,677 51
Buildings.	
Santa Ana, extend packinghouse	$ 2,147 83
San Francisco, construct new depot	179,812 97
Los Angeles, construct new depot	323,834 40
Total	$505,795 20
Water Stations.	
El Casco, improve water facilities	$ 5,385 70
Miscellaneous.	
Colton to Ontario, renew rail	$ 12,187 23
Summerland to Burbank, renew rail	18,354 37
Coast Division, riprapping	41,597 16
Sacramento, raise levee, etc.	9,238 88
Surf District, renew rail	8,098 21
Los Angeles, levee and riprap work	37,402 90
Honda, construct seawall	7,139 37
Between Benham and Ventura, eliminate grade crossing	7,778 48
Total	$141,796 60
Recapitulation.	
Tracks	$ 99,901 98
Bridges	47,677 51
Buildings	505,795 20
Water stations	5,385 70
Miscellaneous	141,796 60
Total	$800,556 99

The stock of Southern Pacific Railroad Company is held by Southern Pacific Company, and Southern Pacific Company in this application asks for authority to guarantee the bonds which it is herein proposed to issue.

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The applicant has offered testimony to the effect that the average price for these bonds on New York stock exchange during the month of April, 1915, and May, 1915, was slightly in excess of 87 per cent of the face value. It is proposed that the bonds should be drawn down for the purposes of this application at 88. To reimburse the company for an expenditure of $800,556.99 at 88, will require an issue of bonds of the face amount of $910,000.00. Southern Pacific Railroad Company first refunding 4 per cent bonds carry 4 per cent interest, bear date of January 1, 1915, and mature January 1, 1955. At 88, the rate of interest would be approximately 4.65 per cent.

Southern Pacific Railroad Company's first refunding mortgage provides for a total issue of $160,000,000.00 of bonds. The company reports now outstanding bonds of the aggregate par value of $142,956,000.00. I find that the expenditures reported by the applicants for additions and betterments are proper bases for an issue of bonds. The financial condition of Southern Pacific Railroad Company and Southern Pacific Company has been reviewed in former proceedings before this Commission and it is unnecessary to go into these matters in detail for the purposes of this application.

I therefore recommend that the application be granted and submit the following form of order:

ORDER.

Southern Pacific Railroad Company and Southern Pacific Company having applied to this Commission for authority to issue $910,000.00 face value of 4 per cent first refunding mortgage bonds of Southern Pacific Railroad Company, and Southern Pacific Company having applied to this Commission for authority to guarantee the payment of said bonds, and a hearing having been held and it appearing that the purposes for which it is herein proposed to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Southern Pacific Railroad Company and Southern Pacific Company be granted authority and they are hereby granted authority to issue $910,000.00 of 4 per cent first refunding mortgage bonds of Southern Pacific Railroad Company under the terms of the mortgage and deed of trust between the applicants herein and The Equitable Trust Company, of New York, trustee, dated January 3, 1905, a copy of which has been filed with this Commission in connection with Application No. 1340, to which reference is hereby made.

It is further ordered that the Southern Pacific Company be granted authority and it is hereby granted authority to guarantee the payment of the bonds herein authorized to be issued.

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The authority herein granted is granted upon the following conditions and not otherwise:

(1) The bonds herein authorized to be issued shall be sold so as to net the applicants herein not less than 88 per cent of the face value of said bonds plus accrued interest thereon.

(2) The bonds herein authorized to be issued shall be issued for the purpose of reimbursing the applicants for expenditure from income in the sum of $800,556.99 as set forth in detail in the foregoing opinion.

(3) The authority herein granted is conditional upon the payment by the applicants of the fee prescribed under the Public Utilities Act.

(4) The authority herein granted shall apply to such bonds as shall have been issued on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION No. 2485.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR PERMISSION TO ISSUE FIRST REFUNDING MORTGAGE BONDS AGGREGATING TWENTY-ONE THOUSAND DOLLARS PAR VALUE.

Application No. 1706.

Decided June 14, 1915.

Applicant having retired $21,000.00 face value of underlying bonds applies for and is authorized to issue $21,000.00 face value of its 4 per cent first refunding mortgage bonds to be sold at not less than 88, proceeds to be used to reimburse treasury for expenditures as noted. Southern Pacific Company authorized to guarantee payment of bonds herein authorized.

Guy V. Shoup, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by Southern Pacific Railroad Company and Southern Pacific Company for authority to issue $21,000.00 first refunding mortgage 4 per cent bonds of Southern Pacific Railroad Company and for authority on the part of Southern Pacific Company to guarantee the payment of said bonds.

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The applicants report the payment of $4,000.00 face value of bonds of Northern Railway Company and $17,000.00 of first mortgage bonds of Southern Pacific Railroad Company of Arizona. It is now proposed to issue $21,000.00 of Southern Pacific Railroad Company first refunding 4 per cent bonds to reimburse the applicants for the payment and cancellation of the $21,000.00 of underlying bonds.

By paying off the $4,000.00 of bonds of Northern Railway Company and the $17,000.00 of bonds of the Southern Pacific Railroad Company of Arizona, the applicants report that they will be in position to discharge the mortgage and deed of trust dated April 14, 1877, executed by said Northern Railway Company to Eugene Kelly and Henry B. Laidlaw, as trustees, and also to satisfy and discharge of record the mortgage and deed of trust dated March 1, 1879, executed by said Southern Pacific Railroad Company of Arizona to Henry M. Newhall and Charles Mayne, as trustees.

The first refunding mortgage of Southern Pacific Railroad Company provided for a total issue of $160,000,000.00 of bonds. Of this amount, $93,682,500.00 were reserved for the purpose of retiring underlying bonds. Among these underlying bonds to be retired were the following:

First mortgage bonds of the Northern Railway Company, a corporation of the State of California, issued under and secured by its mortgage and deed of trust, dated April 14, 1877, to Eugene Kelly and Henry B. Laidlaw as trustees, due January 1, 1907, and outstanding at the time of the execution of said mortgage	$5,156,000 00
First mortgage bonds of the Southern Pacific Railroad Company, a corporation of the Territory of Arizona, issued under and secured by its mortgage and deed of trust, dated March 1, 1879, to Henry M. Newhall and Charles Mayne as trustees, designated as "Series A" and "Series B" and outstanding at the date of the execution of said mortgage as follows:	
Series A, due March 1, 1909	$6,000,000 00
Series B, due March 1, 1910	$4,000,000 00

By the retirement of the $4,000.00 of bonds of the Northern Railway Company and $17,000.00 of bonds of the Southern Pacific Railroad Company of Arizona, applicants have paid off all of the bonds outstanding under these two mortgages.

It is now proposed to issue $21,000.00 of first refunding 4 per cent mortgage bonds at 88 per cent of face value.

I recommend that the application be granted and submit the following form of order:

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ORDER.

Southern Pacific Railroad Company and Southern Pacific Company having applied to this Commission for authority to issue $21,000.00 of first refunding mortgage 4 per cent bonds of Southern Pacific Railroad Company, and Southern Pacific Company having applied for authority to guarantee the payment of said bonds;

And a hearing having been held and it appearing that the purposes for which it is proposed to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Southern Pacific Railroad Company and Southern Pacific Company be granted authority and they are hereby granted authority to issue $21,000.00 of 4 per cent first refunding mortgage bonds of Southern Pacific Railroad Company, under the terms of the mortgage and deed of trust dated January 3, 1905, executed by Southern Pacific Railroad Company and Southern Pacific Company to The Equitable Trust Company of New York, trustee, a copy of which has been filed with this Commission in Application No. 1340 and marked Exhibit "A," to which reference is hereby made.

It is further ordered that Southern Pacific Company be granted authority and it is hereby granted authority to guarantee the payment of the bonds hereby authorized to be issued.

The bonds hereby authorized to be issued shall be issued upon the following conditions and not otherwise:

(1) The bonds herein authorized to be issued shall be sold so as to net the applicants not less than 88 per cent of the face value of the bonds plus accrued interest thereon.

(2) The proceeds from the sale of said bonds shall be used to reimburse applicants for the retirement of $4,000.00 of bonds of Northern Railway Company and $17,000.00 of bonds of Southern Pacific Railroad Company of Arizona.

(3) The authority herein granted is conditioned upon the payment by the applicants of the fee prescribed under the Public Utilities Act.

(4) The authority herein granted shall apply to such bonds as shall have been issued on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

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DECISION NO. 2486.

THE ASSOCIATED CHAMBERS OF COMMERCE, OF ORANGE COUNTY, CALIFORNIA,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 793.

Decided June 14, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The parties to the above entitled proceeding having filed stipulation, dated June 9, 1915, that the same be dismissed, and complainant having also transmitted a request to the same effect,

It is hereby ordered that the above entitled matter be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 14th day of June, 1915.

DECISION NO. 2487.

IN THE MATTER OF THE APPLICATION OF ANDREW SORENSEN TO SELL AND EAST OAKLAND WATER AND ELECTRIC COMPANY TO BUY CERTAIN PUBLIC UTILITY PROPERTY, AND EAST OAKLAND WATER AND ELECTRIC COMPANY TO ISSUE STOCK.

Application No. 1691.

Decided June 14, 1915.

Applicant, Andrew Sorensen, authorized to transfer certain water distributing properties to the East Oakland Water and Electric Company, which latter company is authorized to issue 9,000 shares of its capital stock of the par value of $1.00 per share, 6,000 shares to Sorensen in exchange for the water system, the balance to be sold at not less than par, proceeds to be used for additions to plant.

Andrew Sorensen, in propria persona.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Andrew Sorensen for authority to sell a water utility system owned and operated by him in Oakland, Alameda County, to East Oakland Water and Electric Company. East Oakland Water and Electric Company in turn asks for authority to issue 20,005 shares of stock of the par value of $1.00 per share: 15,000 shares (or such an amount as the Commission may deem proper) to Andrew Sorensen in payment for his properties; 5,000 shares to provide for additions and betterments and 5 shares for the purpose of qualifying directors.

In an application filed March 25, 1915, by the applicants, authority was requested for an issue of securities and the transfer of both the water and electric properties owned by Mr. Sorensen to East Oakland Water and Electric Company. Subsequent to the hearing this application was withdrawn and the present application substituted. By stipulation the evidence introduced at the previous hearing will be considered in evidence in this application.

East Oakland Water and Electric Company was incorporated October 26, 1914, under the laws of the State of California. Its authorized capital stock consists of 25,000 shares of common stock of the par value of $1.00 per share. The company has no outstanding indebtedness.

The water system sought to be transferred has been operated by Mr. Sorensen for approximately ten years. At the present time he has approximately fifty consumers. The plant consists of two wells, tank house, tanks and pumps, located on a lot situated on the west side of Twenty-fifth avenue, 100 feet south of East Twentieth street, in the city of Oakland. The water distributing system, a large part of which extends across private properties, serves houses located in the territory bounded by Foothill boulevard, Carroll street, Twenty-second street and Twenty-fourth avenue. Peoples Water Company also serves, or is prepared to serve, this territory.

In the previous application applicants claimed a reproduction cost for the water utility properties of $8,160.00. The Commission's engineers estimated the reproduction cost of the same properties at $5,891.00. The difference between the two estimates arose principally in the figuring of land values and in the elimination of certain machinery and an automobile which the Commission's engineers did not consider were strictly public utility property.

Reports filed by Andrew Sorensen with the Commission show net operating revenues from water operations during 1913 and 1914 of approximately $400.00 per annum. However, this profit is more apparent than real, as Mr. Sorensen has not charged any of his time or labor to the operation of the property.

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By the installation of additional equipment East Oakland Water and Electric Company expects to add a considerable number of consumers and materially increase the revenues to be derived from the property. This additional equipment consists of new pipe and fittings for extensions to the present distributing system, a crude oil engine, two pumps and electric generator. The cost of this equipment is estimated by the company at approximately $3,000.00.

After a consideration of the evidence I am of the opinion that the application should be granted and I submit the following form of order:

ORDER.

Andrew Sorensen and East Oakland Water and Electric Company having applied to this Commission for authority to transfer certain water utility properties in Oakland, Alameda County, and the latter company having applied for authority to issue certain stock, as hereinbefore set forth, and a hearing having been held,

It is hereby ordered that Andrew Sorensen be, and he is hereby, authorized to transfer the water utility properties now owned by him in Oakland, Alameda County, which properties are described in a statement which is attached hereto and marked Exhibit "A," to the East Oakland Water and Electric Company.

It is further ordered that East Oakland Water and Electric Company be, and it is hereby, authorized to issue 9,000 shares of its common capital stock, of the par value of $1.00 per share—6,000 shares of said stock to be issued to Andrew Sorensen in payment for the properties herein authorized to be transferred; 5 shares to be issued, 1 share each to the five directors of East Oakland Water and Electric Company for the purpose of qualifying said directors; and the balance to be used for additions and extensions to the company's system, as more fully set forth in the application herein.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. East Oakland Water and Electric Company shall issue the stock herein authorized to be issued at not less than the par value of $1.00 per share.

2. The stock herein authorized to be issued by East Oakland Water and Electric Company in payment for the properties to be acquired by it shall only be issued after East Oakland Water and Electric Company has received from Andrew Sorenson a good and sufficient deed covering the transfer of said properties and the transfer of such rights or franchises as Andrew Sorensen may possess for the distribution and sale of water in the city of Oakland, Alameda County.

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3. The par value of the stock herein authorized to be issued shall not be binding upon this Commission or any other public body as representing the value of the properties of East Oakland Water and Electric Company for rate making or other purposes.

4. East Oakland Water and Electric Company shall keep separate and true and accurate accounts showing the receipt and application in detail of the proceeds from the sale of the stock hereby authorized to be issued, and every sixty days, beginning sixty days after the date of the order herein, the company shall make reports to the Commission, stating the sale or sales of said stock during the preceding period, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys; all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority herein granted for transfer of property and issue of stock shall apply only to such transfer of property and such issue of stock as shall have taken place on or before January 1, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1915.

EXHIBIT "A."

All those certain lots, pieces or parcels of land situate, lying and being in the city of Oakland, county of Alameda, State of California, and bounded and particularly described as follows, to wit:

Commencing at a point on the western line of Twenty-fifth avenue distant thereon one hundred fifteen (115) feet southerly from the point of intersection thereof with the southerly line of East Twentieth street, running thence westerly parallel with said line of East Twentieth street forty-four and seventy-two one hundredths (44.72) feet; and thence at right angles northerly forty-two (42) feet; thence at right angles easterly ten (10) feet; thence at right angles southerly twenty-two feet; thence at right angles easterly thirty-four and seventy-two one hundredths (34.72) feet to the westerly line of Twenty-fifth avenue; thence at right angles southerly twenty (20) feet along said westerly line of Twenty-fifth avenue to the point of beginning.

Being a portion of lot No. 33 and lot No. 30 of the Corley tract as the same are delineated and so designated upon that certain map entitled "Map of the Resubdivision of the Corley Tract, Oakland, California," filed in the office of the county recorder of said Alameda County, January 17, 1903.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issue and profits thereof. And also all the estate, right, title, interest, possession, claim and demand whatsoever as well in law as in equity, of the said parties of the first part of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

And together all right, title, interest, possession, claim and demand whatsoever as well in law as in equity, to all pipe lines and accessories now owned or controlled by the party of the first part.

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DECISION No. 2488.

IN THE MATTER OF THE APPLICATION OF COMPTON WATER AND LIGHTING COMPANY FOR PERMISSION TO MORTGAGE ITS PROPERTY.

Application No. 1695.

Decided June 17, 1915.

Applicant being obligated to replace certain of its street mains and having made certain capital expenditures from income, is authorized to issue a note in the face value of $3,500.00, bearing interest at not to exceed eight per cent and for a period of time to exceed five years to cover such items, and to secure such note by a mortgage covering its property.

E. E. Eliott, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Compton Water and Lighting Company of Compton, Los Angeles County, for authority to issue a note in the sum of $3,500.00, and to secure the same by a mortgage upon its property.

Applicant was organized December 12, 1903, under the laws of the State of California. Although organized as a water and lighting company, applicant is at present engaged only in the sale and distribution of water. The company pumps its water from an artesian well, and at present has about 250 consumers, of which about 100 were added during the past year.

The company sells its water at a minimum rate of $1.25 for 1,050 cubic feet, with an additional charge of 12 cents for each 100 cubic feet over and above 1,050 cubic feet.

Applicant has an authorized capital stock issue of 500 shares, of the par value of $50.00 per share, of which 112 shares—having a total par value of $5,600.00—are now outstanding. During the past three years the company has paid annual dividends amounting to 8 per cent upon its outstanding stock. Applicant has no bonds, notes or other outstanding indebtedness.

With its application the company presented a balance sheet showing its condition at the present date as follows:

Resources.		*Liabilities.*	
Real estate	$1,955 30	Capital	$5,600 00
Machinery	881 20	Surplus and undivided profits	2,714 73
Meters	1,104 95	Income from water sold since 1-1-15	1,354 27
Water mains	4,278 06		
Cash and deposits	879 81		
Expenses paid	569 68		
	$9,669 00		$9,669 00

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Applicant's annual reports to the Commission show earnings for the past three years as follows:

	Year 1912	Year 1913	Year 1914
Operating revenue	$2,005 56	$2,783 66	$2,959 65
Operating expenses	1,473 86	1,510 75	1,226 33
Net operating revenue	$ 731 70	$1,272 91	$1,733 32
Less dividends	448 00	448 00	448 00
Balance carried to surplus	$ 283 70	$ 824 91	$1,285 32

The company estimates the value of its plant at approximately $8,500.00. A valuation was made by the Commission's engineers and introduced at the hearing as follows:

Cost new	$11,366 00
Annual depreciation	493 00
Present value	8,289 00

The company proposes to use the money derived from the note in laying mains in the city of Compton. The city is now paving its main street and insists that applicant lay new mains and connections before the street is paved, as the present system of pipes is badly depreciated and requires frequent repairs.

The Commission's engineers report that of the amount proposed to be expended by applicant, the sum of $2,500.00 may be properly charged to additions and betterments, and that the balance should be charged to replacements. However, the company's balance sheet shows the sum of $2,714.00 taken from income and reinvested in plant, and I believe that applicant may be permitted at this time to borrow the sum of $1,000.00 for the purpose of partially reimbursing its treasury for moneys expended from income. I shall accordingly recommend that the application to issue a note in the sum of $3,500.00 be granted.

Applicant states that it has not completed arrangements for its loan but expects to borrow the money required at not to exceed 8 per cent per annum. Applicant further states that it hopes to pay off the loan at the rate of $800.00 per annum.

I recommend the following form of order:

ORDER.

Compton Water and Lighting Company having applied to this Commission for authority to issue a note in the sum of $3,500.00, and to secure the same by a mortgage upon its property,

And a hearing having been held, and it appearing that applicant's request is reasonable and should be granted,

It is hereby ordered that Compton Water and Light Company be, and it is hereby, authorized to issue a note or notes in the sum of $3,500.00 and to secure the same by a mortgage upon its property.

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The foregoing authority is granted upon the following conditions, and not otherwise:

(1) The proceeds from the note herein authorized to be issued shall only be used by applicant for the following purposes:

(*a*) To provide for new construction in the city of Compton, as set forth in the original application $2,500 00
(*b*) To reimburse treasury for moneys expended from income 1,000 00

(2) Before the above mortgage is finally executed, applicant shall submit to this Commission a copy of the proposed form of mortgage and secure a supplemental order approving the same.

(3) The note or notes herein authorized to be issued shall bear interest at not to exceed 8 per cent per annum and shall mature not later than five years after date.

(4) Within thirty days after the notes herein authorized shall have been issued, applicant shall make report of such fact to this Commission.

(5) The foregoing order is made dependent upon the payment by applicant of the fees prescribed by section 57 of the Public Utilities Act.

(6) The authority herein granted to Compton Water and Lighting Company to issue notes and mortgage its property shall apply only to such issue of notes and such mortgage as shall have been executed on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

DECISION No. 2489.

ATLANTIC TRANSFER COMPANY

vs.

LOS ANGELES TRANSFER COMPANY AND PACIFIC ELECTRIC RAILWAY COMPANY.

Case No. 730.

Decided June 17, 1915.

Complainant alleges that defendant companies have entered into a contract which permits the transfer company to check baggage directly over the lines of the railway company to the exclusion of complainant; that defendant transfer company's service is extremely poor and that though it is admitted that the

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Commission has no jurisdiction over the transfer company, it should compel the railway company to grant complainant like privileges as to the checking of baggage at residences and hotels.

Held, That the railway company is obligated only to accept baggage at its stations, that the service herein complained of is merely one of accommodation and not a service incumbent upon the railway company to perform, and accordingly one over which this Commission has no jurisdiction. Complaint dismissed.

Nathaniel R. Rutherford, Jr., for Complainants.

Gray, Barker & Bowen, for Los Angeles Transfer Company.

Frank Karr, for Pacific Electric Railway Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

The complaint herein alleges in part that Pacific Electric Railway Company is a common carrier engaged in the business of transporting passengers and freight for hire over its various lines of railway, particularly over its line of railway running from Los Angeles City to Los Angeles harbor; that Atlantic Transfer Company and Los Angeles Transfer Company are engaged in the business of carrying for hire baggage, trunks, valises and parcels from place to place in the city of Los Angeles, and that Los Angeles Transfer Company does business in and through every county in California; that Los Angeles Transfer Company and Pacific Electric Railway Company have entered into a contract which in its practical operation amounts to an absolute monopoly, in violation of sections 1673, 1674 and 1675 of the Civil Code; that said contract provides in part that Los Angeles Transfer Company shall have the sole right to check baggage at hotels and residences in Los Angeles to points reached over the lines of Pacific Electric Railway Company, for a compensation of 50 cents per trunk and 25 cents for small baggage and parcels; that said prices are as reasonable as could be expected to pay a reasonable profit on the service, but that in the reasonableness of the compensation together with the exclusive character of the privilege lies the monopolistic feature thereof; and that complainant will upon the trial produce affidavits from many hotels and rooming houses in Los Angeles to the effect that the service of Los Angeles Transfer Company has been unsatisfactory in that the company does not promptly attend to its duties and at times seriously inconveniences its patrons. Complainant thereupon asks this Commission to declare the contract between Los Angeles Transfer Company and Pacific Electric Railway Company to be void in so far as it relates to and reaches out of the possessions, stations, lines and trains of Pacific Electric Company.

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Los Angeles Transfer Company and Pacific Electric Railway Company each filed an answer denying the Commission's jurisdiction and making other defenses.

A public hearing was held in Los Angeles on June 1, 1915.

At this hearing, complainant offered to prove that the service of Los Angeles Transfer Company has been the subject of considerable complaint and that baggage frequently is not called for by the company for periods of as long as 24 hours. The complainant admitted that this Commission has no power to declare the contract between Los Angeles Transfer Company and Pacific Electric Railway Company to be void and asked and was granted leave to amend its prayer to ask that Los Angeles Transfer Company be compelled to give better service or else that Atlantic Transfer Company be permitted to compete in the business of checking baggage at homes and hotels.

The definitions of "public utility" and "common carrier" given in section 2 of the Public Utilities Act do not include companies such as Los Angeles Transfer Company. While the company is undoubtedly a common carrier at common law, there are classes of common carriers, including baggage and transfer companies, jitney buses and others over which this Commission has not been given jurisdiction. The complaint must accordingly be dismissed in so far as it asks relief against Los Angeles Transfer Company.

The remaining question under the head of jurisdiction is whether this Commission, by reason of its jurisdiction over Pacific Electric Railway Company, has any power to compel that company to take any action in the premises. The question of this Commission's authority with reference to contracts such as that between Los Angeles Transfer Company and Pacific Electric Railway Company was fully considered by this Commission in *Red Line Tourists Agency* vs. *Southern Pacific Company* (Vol. III, Opinions and Orders of Railroad Commission of California, p. 526), decided on August 30, 1913, to which decision reference is hereby made. This case dealt principally with soliciting on the premises, trains and boats of the railway company. Complainant in the present proceeding seeks to distinguish its case, by asking relief only with reference to the checking of baggage at residences and hotels, off the premises of Pacific Electric Railway Company.

As the Commission has no jurisdiction over Los Angeles Transfer Company, it follows that it has no jurisdiction whatsoever in this case unless it has jurisdiction over Pacific Electric Railway Company with respect to this particular service. On this point, Mr. D. W. Pontius, Pacific Electric Railway Company's traffic manager, testified that the company had never held itself out as performing the service of checking baggage at residences and hotels and that none of its tariffs on file with

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the Railroad Commission refer to Los Angeles Transfer Company or to this service.

In a similar case which came before the Interstate Commerce Commission, *Cosby* vs. *Richmond Transfer Company*, Vol. 23 I. C. C. R. 75, Commissioner Franklin K. Lane said:

> "If there was a duty imposed by law upon the railroad to provide such service, as has been aforesaid, the interposition of an agent would not withdraw the carrier in providing such duty from governmental control. But there is no such duty arising either under statute, common law or custom. The carrier has performed what is required of it when it accepts baggage at its depot, transports it and makes delivery at destination upon its own terminal."

So here, in the absence of a more extended undertaking to the public, Pacific Electric Railway Company has performed its duty when it accepts baggage at its depot, transports it and makes delivery at destination upon its own terminal. When provision is made for anything further, such action is taken voluntarily and not in performance of a duty which can be enforced against the railway company.

As there is no evidence to show that Pacific Electric Railway Company has become obligated to provide for checking baggage at residences and hotels, this Commission has no jurisdiction over this service.

After careful consideration, I conclude that this action must be dismissed, because of want of jurisdiction in this Commission.

I submit the following form or order:

ORDER.

A public hearing having been held in the above entitled proceeding and the Railroad Commission finding that it does not have jurisdiction to grant the relief requested,

It is hereby ordered that said complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

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DECISION No. 2490.

IN THE MATTER OF THE APPLICATION OF FOWLER INDEPENDENT TELEPHONE COMPANY FOR PERMISSION TO INCREASE THE MONTHLY RATES CHARGED ITS PATRONS FOR TELEPHONE SERVICE AT FOWLER, FRESNO COUNTY, CALIFORNIA.

Application No. 1707.

Decided June 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant in the above entitled matter having made written request, on June 15, 1915, that the proceeding be dismissed,

It is hereby ordered that the same be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 17th day of June, 1915.

DECISION No. 2491.

IN THE MATTER OF A PHYSICAL CONNECTION BETWEEN THE PETALUMA AND SANTA ROSA RAILWAY COMPANY AND THE NORTHWESTERN PACIFIC RAILROAD COMPANY AT PETALUMA, SEBASTOPOL OR SANTA ROSA.

Case No. 386.

Decided June 17, 1915.

Upon receipt of numerous informal complaints the Commission instituted the above investigation into the necessity of a physical connection between the respective lines of respondents and after several hearings and much correspondence in which no interest whatever was shown by shippers affected, there appearing no necessity for the connection, matter dismissed.

Jesse W. Lilienthal and *Albert Raymond* for Northwestern Pacific Railroad Company.

Edwin T. McMurray, for Petaluma and Santa Rosa Railway Company.

William Lehn, for the Sunlit Fruit Company.

F. W. Maddocks, in propria persona and for Green Valley Canning Company.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This was an inquiry on the Commission's own motion because of the receipt of various complaints from shippers, and requests that a physical connection be established between the Petaluma and Santa Rosa Railway Company and the Northwestern Pacific Railroad Company.

Considerable time was devoted to an attempt to settle the matter informally, but as the parties could not agree as to whether the connection should be at Sebastopol or Petaluma it was finally set for hearing, and a public hearing was held on June 16, 1913.

At this hearing there were but two shippers present, although all who had written the Commission, or complained in person to the Commission, were notified of the hearing. One of the shippers present at the hearing, Mr. William Lehn, testified that he shipped only five carloads a year and that he would not expect the railroads to go to the expense of making the physical connection for such movement of freight as he had.

Mr. F. W. Maddocks, representing himself and also the Green Valley Canning Company, testified that his company shipped approximately twenty-five carloads, which tonnage would be increased if the physical connection was made, and that they would have about sixty carloads of canned fruits per year to ship out.

Owing to the small number of shippers who appeared at the hearing the Commission decided to postpone the case and try and get more of the interested parties to appear. It was, therefore, postponed with the understanding that Mr. Maddocks would interest himself in trying to develop some interest among the shippers and that he would report to the Commission so that the case could be again set down for further hearing.

In September, 1913, the Green Valley Canning Company wrote the Commission that the matter would be attended to at once; that they had taken it up with several individuals and firms who were interested, and that we would receive letters from them showing their interest. No such communications were received and the matter has remained on the Suspense Docket since that time. On April 24, 1915, in an endeavor to bring this matter to some final conclusion the Commission wrote the carriers interested, and also wrote the Green Valley Canning Company. Receiving no reply we again wrote them on May 27th, and advised that if we did not hear from them by June 15th we should infer that they desired the case dismissed. To this letter the Petaluma and Santa Rosa Railway Company replied expressing their willingness to have the case dismissed, but no reply has been received from the Green Valley Canning Company.

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At the time of the public hearing the Commission was convinced that sufficient reason had not been offered for establishing the physical connection prayed for, and in view of the absolute lack of interest since shown by the shippers, I believe and find as a fact that the case should be dismissed.

I herewith recommend the following form of order:

ORDER.

For the reasons set forth in the opinion preceding this order, the investigation upon the Commission's own initiative in the matter of a physical connection between the Petaluma and Santa Rosa Railway Company and the Northwestern Pacific Railroad Company is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

DECISION No. 2492.

IN THE MATTER OF THE APPLICATION OF MARIN COUNTY ELECTRIC RAILWAYS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION AND OPERATION OF A STREET RAILWAY SYSTEM IN MILL VALLEY, AND FOR AUTHORITY TO ISSUE STOCKS AND BONDS.

Application No. 947.

Decided June 17, 1915.

Applicant having heretofore been authorized to issue certain stock for the purposes of constructing a street railway in Mill Valley, is now authorized to pay a sales commission of 15 per cent on such stock as remains unsold at present, such commission to be paid only when such stock shall have been fully paid for.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SEVENTH SUPPLEMENTAL ORDER.

This Commission, on March 26, 1914, having authorized the applicant herein to issue and sell 670 shares of stock at the par value of $100.00 per share for the purpose of constructing a street railway system in the town of Mill Valley, Marin County, and said order having expressly provided the manner in which the proceeds from the sale of said stock should be expended; and applicant now having requested that the

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Commission's previous order be amended to the end that it be authorized to pay a commission of 15 per cent upon that portion of the above mentioned stock now remaining unsold; and it appearing that applicant's request is reasonable and should be granted,

It is hereby ordered that the order heretofore made in the above entitled matter on March 26, 1914, and such orders as have been made supplemental thereto, be, and they are hereby, amended to allow Marin County Electric Railways to pay a commission of not to exceed 15 per cent to its agents or solicitors upon the unsold portion of the stock heretofore authorized in Decision No. 1377.

The authority herein granted is granted upon the following conditions and not otherwise:

(1) No commission shall be paid by applicant upon any share of stock issued hereunder unless said stock shall have been fully paid for in cash.

(2) Out of the proceeds received from the sale of any shares of stock issued hereunder, applicant shall set aside the sum of $15.00 from every share of stock so sold. All sums so set aside shall be held in a special fund and applied only to the payment of commissions to the company's agents and solicitors as hereinabove authorized.

(3) The order herein made shall be subject to all the conditions heretofore imposed in Decision No. 1377 and such orders as have been made supplemental thereto, not in conflict with the order herein.

The foregoing seventh supplemental order is hereby approved and ordered filed as the seventh supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

DECISION No. 2493.

IN THE MATTER OF THE APPLICATION OF THE CLAREMONT DOMESTIC WATER COMPANY FOR ORDER AUTHORIZING AN ADVANCE IN RATES FOR DOMESTIC WATER IN THE CITY OF CLAREMONT, CALIFORNIA, AND IN THE RATES FOR IRRIGATION WATER USED ADJACENT THERETO.

Application No. 1144.

Decided June 17, 1915.

George S. Sumner, for Applicant.

Russell K. Pitzer, for City of Claremont.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL OPINION.

The application of the Claremont Domestic Water Company for authority to increase rates for domestic service and for irrigation service involved the establishment of just and equitable payment to be made by the city of Claremont for fire service. It was found by the Commission, as recited in the opinion and order No. 1677, that the service being rendered at that time by the Claremont Domestic Water Company was not satisfactory, due to the small diameter of the pipe lines making up the distribution system. It was, therefore, required of the company that before it be allowed to collect the rate of $2.00 per month per hydrant set out in the above mentioned order of the Commission as a proper rate, that the distribution system of the company should be improved by the installation of larger mains.

The Commission has now been informed both by the president of the Claremont Domestic Water Company and by the city engineer of Claremont that the instructions of the Commission have been fulfilled and there are now 58 fire hydrants, 48 of which are supplied directly by mains 4-inch in diameter and larger, and that a recent test of various of these hydrants resulted entirely satisfactory.

Throughout the proceedings in Application 1144, the number of hydrants installed and to be retained in service was referred to as 50 and the rate then decided upon has been the result of consideration of that number of hydrants at least.

For these reasons, I recommend the following supplemental order:

SUPPLEMENTAL ORDER.

It is hereby ordered that the Claremont Domestic Water Company be allowed to collect from the city of Claremont for fire service at the following rates:

For hydrants served directly by mains of 4-inch diameter or over, per month	$2 00 per hydrant
For hydrants served by mains smaller than 4-inch in diameter, per month	1 00 per hydrant
Minimum charge	100 00 per month

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

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DECISION NO. 2494.

PAUL A. TARPEY, DOING BUSINESS UNDER THE NAME AND STYLE OF NORTH END STAGE COMPANY,

vs.

SOUTHERN PACIFIC COMPANY, LAKE TAHOE RAILWAY AND TRANSPORTATION COMPANY, *Intervenor.*

Case No. 801.

Decided June 17, 1915.

Complainant, operating a stage line between Truckee and Carnelian Bay, Tahoe Vista and Brockway, petitions the Commission to establish a through route and joint rates between such points and points on the lines of defendant railway company, defendant protesting the granting of such petition, claiming that the present through route is amply sufficient to satisfy needs of traveling public to resorts mentioned.

Held, A review of the evidence disclosing the facts that the fartherest of the three points may be reached by stage in one hour, the present circuitous through route taking twenty hours, has led a number of people to use the stage in preference to taking the route called for by their tickets; that public convenience demands the establishment of a through route as applied for which defendant is directed to establish, such through rates not to exceed those in effect at present and if no agreement can be reached within ten days as the division thereof, application may be made to the Commission for such an arrangement.

Theodore J. Roche, for Complainant.

George D. Squires, for Defendant.

Frank S. Oliver, for Intervenor.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

On April 24, 1915, Paul A. Tarpey, doing business under the name of the North End stage line, and operating automobile stages between Truckee and Carnelian Bay, Tahoe Vista and Brockway, summer resorts located on the northerly end of Lake Tahoe, made application to the Commission asking for the establishment of a through route and joint passenger rates from points on the line of the Southern Pacific via Truckee to the resorts named above, alleging that public convenience and necessity require their establishment.

The Southern Pacific Company in its answer denies the allegations of complainant and declares that there is now in effect a satisfactory through route and joint rates in connection with the lines of the Lake Tahoe Railway and Transportation Company via Tahoe tavern and steamer. The Lake Tahoe Railway and Transportation Company intervened, maintaining that the present arrangements in connection with their line to Carnelian Bay, Tahoe Vista and Brockway provide a comfortable, convenient and efficient service, and denies that the con-

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venience and necessity of the traveling public demand the establishment of a second route and rates via the North End stage line.

The complainant introduced evidence tending to show that travelers over the circuitous route of the Lake Tahoe Railway and Transportation Company incur much needless expense and loss of time which would be obviated if a through route and joint rates were established in connection with the North End stage line.

The record discloses the following facts: The distance from Truckee to Brockway, the most distant of the three resorts, is approximately 13½ miles, over a good mountain road, and can be easily covered by auto stage in one hour, while Carnelian Bay and Tahoe Vista can be reached in 45 and 50 minutes, respectively. Under the present through route arrangement passengers destined Carnelian Bay, Tahoe Vista or Brockway, leaving San Francisco on train No. 6 at 7 p.m., arrive Truckee 6:50 a.m., leave Truckee 7:15 a.m. via the Lake Tahoe Railway, arrive Tahoe Tavern 8:15 a.m., leave Tahoe Tavern about 10 a.m. on a steamer moving in a southerly direction around the lake, and do not reach Brockway until 4 o'clock in the afternoon, thus taking approximately 9 hours to reach a point 13½ miles from Truckee which is reached in one hour by auto stage. The situation is still more difficult and expensive to passengers holding Lake Tahoe Railway and Transportation Company tickets who make the daylight trip from San Francisco and reach Truckee at 7:30 p.m., as there is no through connection and a stop over night is necessary at either Truckee or Tahoe tavern for the morning boat arriving at Brockway at 4 p.m., or a journey of 20 hours from Truckee as against the direct auto stage connection of one hour. In the opposite direction the bulk of the travel leaves Truckee for San Francisco at 9:20 p.m., requiring departure from Brockway on the boat at 4:20 p.m., or 5 hours prior to the leaving time of the train from Truckee. In the months of July and August special boats operate between Tahoe Tavern and Brockway, affording improved service to inbound traffic but practically no relief to outbound business. Under the present through route arrangement which requires from 5 to 20 hours to travel between Truckee and Carnelian Bay, Tahoe Vista or Brockway, it is impossible to make week-end trips; this unsatisfactory situation would be overcome by using the auto stage from Truckee. Testimony was introduced by applicant to the effect that there was much complaint during the season of 1914 regarding the service rendered and that many persons holding return tickets via the steamer and rail line did not use them, preferring to pay a second fare on the auto stage to Truckee rather than waste the hours required to make the circuitous journey via Tahoe Tavern. It was also brought out that there is a heavy seasonal travel to points at the northerly end of the lake, one resort handling from 700 to 1,000 guests per season, and that

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there was must complaint from these persons because through transportation was not available over the shorter and more direct route.

Intervenor's testimony was directed to an explanation of the time schedules and the endeavor put forth to render a service satisfactory and convenient to its patrons, and an effort was made to prove that the facilities afforded were not unreasonable. It was admitted, however, that the running time via its line between Truckee and these resorts could not be materially reduced.

Defendant, Southern Pacific Company, in its oral argument and brief resisted the application on the ground that the present through route was satisfactory from a service standpoint and that, therefore, the Commission had no jurisdiction under section 33 of the Public Utilities Act to establish a second route. This point has already been decided in Case No. 250, *Central California Traction Company* vs. *The Atchison, Topeka and Santa Fe Railway Company,* 1 C. R. C. 632:

> "Considerable difference of opinion seems to exist between the attorneys for the parties herein over the meaning of section 33 of the Public Utilities Act. The meaning of this section seems to be clear. Under it, this Commission can establish a through route and joint rates when after hearing it is found that a public convenience and necessity exists therefor, either by reason of the fact that the rates, fares or charges in force are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate or fare exists. What are excessive and unjust rates, and what is an unsatisfactory or a satisfactory through route and joint rate, either or both, is for this Commission to determine at the hearing which is provided for in section 33."

Also on page 636:

> "I believe that under the provisions of section 33 of the Public Utilities Act this Commission has the general power to grant relief demanded herein under a proper state of facts, and I believe that if public convenience and necessity require the establishment of the through route and joint rates, that the defendant can not urge that such rates as to it are unreasonable."

After careful consideration of all the testimony, exhibits and briefs, I find as a fact that the present through route arrangement has not afforded, and does not afford, adequate and satisfactory passenger service between Truckee and Carnelian Bay, Tahoe Vista and Brockway, and that a through route and joint rates for passenger traffic should be established between all points on the line of the Southern Pacific Company, as shown in section 10 of its Local and Joint Excursion Tariff No. 33, C. R. C. No. 2098, and Carnelian Bay, Tahoe Vista and Brockway, points on Lake Tahoe, in connection with the North End stage line operated by Paul A. Tarpey, the complainant in this case.

The conclusions reached in this case do not necessarily establish a precedent, as section 33 of the Public Utilities Act does not contemplate the establishment of through route and joint rates whenever requested,

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and the Commission will only exercise its authority when the circumstances and conditions in each particular case prove that the public convenience and necessity demand the establishment of such through route and joint rates.

No satisfactory testimony was offered with reference to the rates to be established but same should not be in excess of those in effect in connection with the Lake Tahoe Railway and Transportation Company. Should carriers fail to perfect an adjustment, the question of the rates to be charged may be referred to this Commission for consideration.

I submit the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Paul A. Tarpey, doing business under the name of the North End stage line, operating automobile stages between Truckee and Carnelian Bay, Tahoe Vista and Brockway, summer resorts on the northerly end of Lake Tahoe, to establish a through route and joint passenger rates between points on the line of the Southern Pacific Company and Carnelian Bay, Tahoe Vista and Brockway, and a public hearing having been held, and it having been found as a fact that the present through route has not afforded and does not afford adequate and satisfactory service between the points in question, and it having been determined that public convenience and necessity require the granting of said application,

It is hereby ordered that the Southern Pacific Company establish a through route and joint passenger rates between all points on the line of the Southern Pacific Company as shown in section 10 of its Local and Joint Excursion Tariff No. 33, C. R. C. 2098 and Carnelian Bay, Tahoe Vista and Brockway in connection with the North End stage line operated by Paul A. Tarpey, the complainant in this case.

It is further ordered that complainant and defendant endeavor to agree upon proper rates and present to this Commission within ten (10) days from the date of this order a tariff setting forth the joint rates between the points involved, and that the parties hereto also seek to agree upon a proper division of the joint rates; but in the event such an agreement can not be reached on or before ten (10) days from the service of this order upon the parties, this Commission will proceed to establish joint rates and arrange for their division as provided by law.

It is further ordered that said passenger rates over said through route shall not be in excess of those in effect as shown in section 10 of Southern Pacific Company's Excursion Tariff No. 33, C. R. C. No. 2098.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

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DECISION NO. 2495.

IN THE MATTER OF THE APPLICATION OF MARIN COUNTY ELECTRIC RAILWAYS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK.

Application No. 1360.

Decided June 17, 1915.

Applicant, having heretofore been authorized to issue stock for the purposes of building a street railway in the city of Sausalito, applies for and is granted permission to pay a sales commission of 15 per cent thereon on portion remaining unsold at the present time, such commission to be paid only when stock has been fully paid up.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

This Commission, on November 23, 1914, having authorized the applicant herein to issue and sell 185½ shares of stock at the par value of $100.00 per share for the purpose of constructing a street railway system in the town of Sausalito, Marin County, and said order having expressly provided the manner in which the proceeds from the sale of said stock should be expended; and applicant now having requested that the Commission's previous order be amended to the end that it be authorized to pay a commission of 15 per cent upon that portion of the above mentioned stock now remaining unsold, and it appearing that applicant's request is reasonable and should be granted,

It is hereby ordered that the order heretofore made in the above entitled matter on November 23, 1914, and such orders as have been made supplemental thereto, be, and they are hereby, amended to allow Marin County Electric Railways to pay a commission of not to exceed 15 per cent to its agents or solicitors upon the unsold portion of the stock heretofore authorized in Decision No. 1954.

The authority herein granted is granted upon the following conditions and not otherwise:

1. No commission shall be paid by applicant upon any share of stock issued hereunder unless said stock shall have been fully paid for in cash.

2. Out of the proceeds received from the sale of any shares of stock issued hereunder applicant shall set aside the sum of $15.00 from every share of stock so sold. All sums so set aside shall be held in a special fund and applied only to the payment of commissions to the company's agents and solicitors as hereinabove authorized.

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3. The order herein made shall be subject to all the conditions heretofore imposed in Decision No. 1954 and such orders as have been made supplemental thereto, not in conflict with the order herein.

The foregoing first supplemental order is approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

Decision No. 2496, grade crossing; not printed. See end of volume.

DECISION No. 2497.

IN THE MATTER OF THE APPLICATION OF GLENDALE AND MONTROSE RAILWAY FOR AN ORDER AUTHORIZING CHANGE OF RATES.

Application No. 1517.

Decided June 17, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING REHEARING.

Applicant herein having filed a petition for rehearing and the Commission being of the opinion that no good cause having been shown why a rehearing should be had,

It is hereby ordered that said petition for rehearing be, and the same is hereby, denied.

It is further ordered that paragraph 3 of the order heretofore made in the above entitled proceeding on May 22, 1915, be and the same is hereby amended to read as follows:

	One way	Round trip	10-ride individual	30-ride family
Between Glendale (Broadway and Brand) and Montrose (Honolulu avenue)			$0 90	$2 70
and La Crescenta (Los Angeles avenue)	$0 15	$0 25	1 00	3 00
Between Eagle Rock (Central avenue) and Montrose (Honolulu avenue)			90	2 70
and La Crescenta (Los Angeles avenue)	15	25	1 00	3 00
Between Glendale (Avenue F) and La Crescenta (Los Angeles avenue)	10			

NOTE.—Round-trip, limit ten days; ten-ride individual limit thirty days; thirty-ride family, limit ninety days.

Dated at San Francisco, California, this 17th day of June, 1915.

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DECISION NO. 2498.

SECURITY INVESTMENT COMPANY

vs.

PALERMO LAND AND WATER COMPANY.

Case No. 627.

Decided June 17, 1915.

Complainant, being in possession of certain land purchased from defendant, applied to defendant for water to irrigate same in accordance with certain provisions of the deed of conveyance transferring such property, wherein defendant agreed to supply water for irrigating purposes to the property in question, but which it now refuses to do, and complainant accordingly petitions the Commission to direct defendant to render service.

Defendant in answer states that it has adopted a rule whereby irrigationists lose their right to demand water unless they have been receiving service within a period of not to exceed five years subsequent to the date of their respective deeds, and as complainant comes within this class it is not obligated to render service; also that its supply of water is insufficient to supply additional consumers without seriously inconveniencing those at present receiving service.

Held, After review of the evidence tendered: That defendant dedicated its water for use on the Palermo Colony lands, which includes property of complainant, at rates, after a four-year period, "as shall be fixed by law." That as rates of a public utility only can be fixed by law, defendant is a public utility whose water is dedicated to the use of lands which includes property of complainant; that as defendant has never notified complainant as to the establishment of a rule by which it would forfeit its rights to water, no limitation could run against such right, and defendant is accordingly still obligated to serve complainant's lands.

Held, As to defendant's claim that its supply of water is insufficient: That an investigation shows that if its flumes are properly taken care of, it is able in years of normal rainfall to irrigate from 750 to 1,000 additional acres or an area considerably in excess of complainant's lands. That to judge the capacity of a water system by the driest years and supply consumers accordingly, permitting water to waste during periods of normal rainfall, merely permits of large tracts of land which would otherwise receive water to lie barren, and acts as a considerable detriment to the development of a community and seriously reflects on property values.

Held, That defendant has sufficient water and is also obligated to supply the lands in question, and it is accordingly directed to furnish complainant with water for irrigation at its regular rates for such service, within twenty days.

Norman A. Eisner, for Complainant.

McCutchen, Olney & Willard, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Complainant in this proceeding asks the Railroad Commission to make an order directing defendant to supply water to complainant for the irrigation of specified lands in the so-called "Palermo Colony," near Oroville.

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The amended complaint alleges, in effect, that defendant Palermo Land and Water Company, hereinafter referred to as the Palermo company, is engaged in the business of selling and distributing water from its irrigation system in Butte County and of selling land and water rights; that Security Investment Company, the complainant herein, hereinafter referred to as the Investment company, is the owner of lots No. 1 and No. 8 of block 88 and lot No. 1 of block 87, of subdivision No. 1 of the Palermo citrus tract and that the Palermo company, the former owner thereof, sold them to the predecessors of Security Investment Company and conveyed the same by deeds containing certain agreements with reference to the supply of water, to which agreements more detailed reference will hereinafter be made; that the Investment company is the owner of the water rights granted to its predecessors in interest as purchaser of these lots; that each of said lots can be irrigated from the ditches and canals of the Palermo company; that said lots are under cultivation and have growing thereon olives, oranges and peaches, and that the only source from which the land can be irrigated is the Palermo company's irrigation system; that the Investment company has at various times demanded and sought to purchase water from the Palermo company at its regular rates for the irrigation of said lot No. 8, in block 88, but that the Palermo company has consistently refused to sell or furnish any water for the irrigation of said lot, although the property is under cultivation and in need of irrigation and only irrigable from the Palermo company's system, which company is alleged to have sufficient water to sell to the Investment company for the irrigation of said lot; that the easterly portion of said lot No. 1 of block 88, has for some time been under cultivation and irrigated by water received from the Palermo company; that the Investment company has recently planted the westerly portion of said lot No. 1, consisting of about 1½ acres, to olives, and has demanded water therefor from the Palermo company, but that the Palermo company has refused to supply water, although the property is under cultivation and in need of irrigation and only irrigable from the Palermo company's system; that said lot No. 1 of block 87 has been set out to olive trees; that the Investment company has demanded water for said lot from the Palermo company but that the Palermo company has refused to supply water, although the property is under cultivation and in need of irrigation and only irrigable from the Palermo company's system; that the Palermo company has discriminated between persons requesting water from the company for the irrigation of lands in the Palermo citrus tract and particularly that the company has discriminated against the complainant in that after having refused water to complainant it supplied water to the lands of other persons who were in the same condition as the complainant; and that the demands of complainant for water from

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the Palermo company antedated those of the owners of lands to which the Palermo company has furnished water. The complainant asks that defendant be ordered to deliver water for irrigation purposes on lots No. 1 and No. 8 of block 88 and lot No. 1 of block 87 in subdivision No. 1 of said Palermo citrus tract.

The answer to the amended complaint alleges that the Railroad Commission has no jurisdiction in this proceeding on the ground that the complaint shows a controversy between the Investment company and the Palermo company with reference to the right of the Investment company to demand and receive water for its lands from the Palermo company. Defendant denies that it is obligated to deliver water to complainant and alleges that it has no water to supply to complainant. Defendant denies that it has discriminated in any way as between its customers or between the various persons who have demanded water from it. Defendant alleges that the entire supply of water owned or controlled by it during the last three years has been and now is necessary and requisite for the water users who now are and during the last three years have been receiving water from its system, and that if it is now compelled to deliver water to complainant or to any other applicant for the irrigation of lands not now irrigated from its system, the necessary effect of such action will be to deprive some of its customers who are now receiving and using water for the purpose of irrigation, of a portion of the water now in use for beneficial purposes. Defendant sets up the defense that where it has sold land with a covenant to supply water and the water has not been used for a full period of five years, the defendant is under no further obligation to supply water to the lands thus sold. Defendant alleges that it is now supplying water for the irrigation of between 2,300 and 2,400 acres of land in Butte County and that there are at least 439 acres of land which the company heretofore sold under agreements for the delivery of water, which agreements defendant claims have not lapsed and avers that in case of a surplus of water, defendant is legally obligated to supply water first to said 439 acres of land. The defendant prays that the complainant be denied any relief whatsoever.

Public hearings in this proceeding were held at Oroville on November 10, 1914, and in San Francisco on September 16, November 24, 27 and 30, 1914. The parties having expressed a desire to file briefs, the complainant waived the opening brief. Defendant was given ten days within which to file a brief and complainant ten days within which to answer. Because of unanticipated delays in the filing of briefs, the decision in this case has been unavoidably withheld for a considerable period of time.

The evidence shows that the Investment company is the owner of lot Nos. 1 and 8 of block 88, and lot No. 1 of block 87, of subdivision

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No. 1 of Palermo citrus tract at Palermo, Butte County, California. Lot No. 1 of block 88 contains 8.43 acres; lot No. 8 of block 88 contains 8.36 acres; and lot No. 1 of block 87 contains about 7.17 acres. These lots were all heretofore owned by the Palermo company and have now passed by mesne conveyances to the Investment company.

The Palermo company's deed conveying lot No. 1 of block 87 and lot No. 1 of block 88 contains, among others, the following covenant:

> "And it is further agreed that if the party of the second part, or his heirs or assigns, shall at any time, plant trees or vines, or otherwise cultivate said lands or any part thereof, the party of the first part will furnish from its ditches up to the line of said land nearest to the main or branch ditch, pipe or flume of said party of the first part, such water as may be necessary to irrigate such trees, vines or cultivated crops, not exceeding one miner's inch for every seven acres so improved or cultivated, at such rates as may be fixed by law in the district in which said lands are situated; provided, however, that nothing herein contained shall make the party of the first part liable for not furnishing water at such time or times as it may be unable so to do because of drought, breakage of pipes, ditches or flumes, or any other cause not within its control."

The deed from the Palermo company conveying lot No. 8 of block 88 contains, among others, the following covenant:

> "And it is further agreed, that if the party of the second part or heirs or assigns shall at any time prior to July 1, 1889, plant trees or vines or otherwise cultivate said land or any part thereof, the party of the first part will furnish from its ditches up to the line of said land nearest to the main or branch ditch, pipe or flume of said party of the first part such water as may be necessary to irrigate such trees, vines or cultivated crops, not exceeding one miner's inch for every seven acres so improved or cultivated free of charge for four years from and after the commencement of such cultivation and thereafter will furnish said water in proportion to the amount of land cultivated, at such rates as may be fixed by law in the district in which said lands are situated; provided, however, that nothing herein contained shall make the party of the first part liable for not furnishing water at such time or times as it may be unable to do so because of drought, breakage of pipes, ditches or flumes or any other cause not within its control."

The testimony shows that the Palermo company has sold a total of some 3,000 acres of land at Palermo and that in each case the deed contains an agreement to supply water to the property sold. The testimony further shows that the major portion of the land was sold for $75.00 per acre, although a few small parcels were sold between 1909 and 1911 for as high as $100.00 to $125.00 per acre, and that the reasonable value of the land without water would have been $25.00 per acre.

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It thus appears that the persons who bought land from the Palermo company paid from $50.00 to $100.00 per acre in excess of the value of the land without water, in reliance on the agreement of the Palermo company to supply the necessary water.

Lot No. 1 of block 87 was planted to olive and peach trees in the spring of 1914. Demand for water to irrigate this lot was made by the Investment company in the spring of 1914, subsequent to the planting of the peach trees and prior to the planting of the olive trees, but the demand was refused and complainant has been compelled to irrigate the trees by means of buckets from a well. This lot has never received water from the Palermo company.

Lot No. 8 of block 88 was planted to olive trees in 1888 or 1889 and was irrigated from the Palermo company's system up to but not subsequent to the year 1892. In 1912 and 1913, the Investment company planted olive and orange trees on this lot to take the place of such of the old olive trees as had died. Written demand upon the Palermo company for the supply of water for this lot was made on February 19, 1912, and was refused. Thereafter, the young olive and orange trees to which I have referred were planted. There is some evidence that a verbal demand for water for this lot was made upon the Palermo company in the fall of 1911. No water from the Palermo company has been used on this lot subsequent to 1892.

The easterly 4.78 acres of lot No. 1 of block 88 are planted to 400 orange trees and have received water from the Palermo company ever since 1889. In the spring of 1913, the Investment company planted the westerly 3.65 acres to young olive trees. Although demand was made for water to irrigate these trees, the Palermo company has consistently refused to deliver water for any portion of this lot except the easterly 4.78 acres.

Palermo Land and Water Company was incorporated on January 4, 1888, under the laws of California, for the purpose primarily of engaging in the sale of lands in what is known as the Palermo colony, in Butte County, and of supplying water thereto. This tract of land contains approximately 6,000 acres. The company bought an irrigation system which was originally constructed in the early mining days and which diverts water from the south fork of the Feather River, near Enterprise. The company, in the years 1888 to 1892, constructed additional canals and commenced the operation of the system for the distribution of water to the Palermo colony. The company also continued to supply water to the existing consumers near Oroville. Witnesses for the Palermo company testified that the company's policy has been not to sell water for use on lands outside of the Palermo colony except lands near Oroville which were being irrigated at the time the company acquired its

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irrigation system. From 1888 to February, 1912, the company sold some 3,000 acres of land, agreeing in each case to supply water for the irrigation of the same. Mr. R. A. Clark, the Palermo company's president, testified that in the fall of 1911 his company became apprehensive that it did not have on hand sufficient water to irrigate the entire Palermo tract and that thereupon, in the fall of 1911, the company adopted a new policy to the effect that it would supply no water to lands to which so-called water rights were attached but which had not used water for a period of five years subsequent to the date of the respective deeds. In accordance with this policy, the Palermo company has refused to supply water to the Investment company and to a number of other parties who have made demand therefor.

Defendant has presented two main issues herein: (1) the company claims that it is under no obligation to supply water to the lands of the Investment company herein described; (2) the company further claims that the supply of water available to it and under its control is insufficient to permit it to supply water to said lands.

Referring to the first defense, I find as a fact that the Palermo company dedicated all the waters under its control, except those which were necessary to serve the existing consumers near Oroville to the service of the lands included within the so-called Palermo colony. Temporarily, the company has sold a portion of these waters for use by dredgers. The lands owned by the Investment company and referred to in this proceeding are a part of the lands to which the Palermo company has dedicated its water. Whatever other effect the Palermo company's deeds conveying the lots here under consideration may have, which question it is not necessary here to consider, they certainly have the effect of making clear the fact that these lots are within the area to the use of which the Palermo company's water was dedicated. The deed of November 30, 1891, conveying lot No. 1 in block 87 and lot No. 1 of block 88, specifically provides that if the purchaser, his heirs or assigns, shall "at any time" plant trees or vines, or otherwise cultivate the land or any part thereof, the Palermo company will furnish from its ditches "such water as may be necessary to irrigate such trees, vines or cultivated crops, not exceeding one miner's inch for every seven acres so improved or cultivated." The deed of May 25, 1888, conveying lot No. 8 of block 88, specifically provides that if the purchaser, his heirs or assigns, shall plant trees or vines or otherwise cultivate the land or any part thereof at any time prior to July 1, 1889, the Palermo company will supply from its ditches such water as may be necessary to irrigate such trees, vines or cultivated crops, not exceeding one miner's inch for every seven acres so improved or cultivated, free of charge for the first four years after the commencement of the cultivation, and thereafter at such rates as may be established by law. That the Palermo company

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held itself out as a public utility and contemplated being dealt with as a public utility in connection with the sale of its water appears from the fact that its deeds all provide that it will sell its water, in certain cases initially and in other cases after a free use of four years, "at such rates as may be fixed by law in the district in which said lots are situated." The only water rates fixed "by law" are the rates of a public utility water company.

It thus appearing that the Palermo company is a public utility, that it undertook to supply water as a public utility to the lands which it sold in the Palermo colony and that the lands of the Security Investment Company, herein under consideration, are included among the lands thus sold, it would seem to follow that those lands are still entitled to the service of water from the Palermo company unless something has intervened to deprive them of their rights. The Palermo company's only reliance in support of its contention that these lands have lost their rights is on the fact that in the fall of 1911 the Palermo company decided that henceforth it would recognize no claims to water for lands which had not used the water for a continuous period of five years subsequent to their conveyance by the Palermo company. It is admitted that there is nothing in the deeds of the Palermo company to put the purchaser on notice that any such policy would ever be adopted by the company. The record shows also that prior to the refusal of the Palermo company to deliver water to the three lots herein under consideration, no notice was ever given by the Palermo company to the Investment company that if water were not used during any designated time, the Palermo company would refuse to deliver water to the lands in accordance with the terms of its contracts and deeds. The Palermo company claims that the owners of 1,399.24 acres of land which were sold with agreements to deliver water have now forfeited their rights to receive water from the company's system and that the owners of 439.42 acres of land, which land has not as yet been irrigated, have the right to demand water from the Palermo company if such demand is made within a period of five years after the date of the respective deeds to the owners thereof.

The decision of the Supreme Court of California in *Copeland et al.* vs. *the Fairview Land and Water Company et al.*, 165 Cal. 148, decided on March 20, 1913, would seem to show conclusively that there is no merit in the claim of the Palermo company that the lands of the Investment company have lost their right to water. One of the questions in that case was whether the plaintiff McCunn had lost the right to receive water from Fairview Land and Water Company. Referring to this question the court, at page 166, says:

> "Here the right was originally gained by the Fairview company. If it was by diversion or appropriation, that company made it for

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use on these particular lands, and the diversion, or appropriation, has ever since that time been made by that company or its intermediaries, for the benefit of all the parties. The plaintiffs all derived their titles from and are holding under that company. Where one thus diverting the water and thereby acquiring a water right, whether by prescription or statutory appropriation, sells an interest in it to another and thereafter continues to divert the water himself for the vendee, the fact that the vendee does not demand or use the water he has bought may, if it is not otherwise beneficially used by some one receiving it from the appropriator, enable some third person to take such unused water and defeat the right of the first appropriator, upon the theory that such part has not been by him applied to a beneficial use. But we do not understand the law to be that such failure to receive or use the water by the vendee will forfeit his right thereto to the vendor who has in the mean time continued the diversion, unless such vendor in some manner informs the vendee that such forfeiture will be claimed because of nonuse, or asserts it against him by some hostile act. Mere failure to take and use the water for which he has, at the time, no need, will not forfeit the right to the vendor in such a case."

Again, at page 167, the court says:

"The evidence does not show that the Fairview company in any way manifested its intention to take and hold adversely to them the water to which these lands were entitled. Until it did manifest such intention to them, its title against them by prescription would not begin to run."

In the present proceeding it appears that no notice was given to the Investment company by the Palermo company prior to February 19, 1912, that the Palermo company would claim any forfeiture of rights because of nonuse of water, nor was there any overt act on the part of the Palermo company, prior to said date, showing any such intention. The statutes of limitation accordingly has not run.

On the facts of this case, nothing has been shown to absolve the Palermo company from its duty to serve the lands of the complainant herein.

Defendant's second defense is that its entire supply of water is required for the 2,357.95 acres now irrigated from this system and that it has no water for the irrigation of additional land. Defendant presented testimony to show that from about July 15th, until the first rains in the fall of 1912 and 1913, the company diverted from the south fork of the Feather River all the water flowing in the river at the head of the company's canal, and that during portions of the fall in these two years, particularly in the month of August, the company did not have sufficient water to supply the needs of its consumers. A number of

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consumers under this system testified that during a portion of the fall of 1912 and 1913 their olives shriveled by reason of the lack of water. While the olives swell out again when water is later applied, these consumers testified that they thus lost a portion of the usual period of growth of the olives, with resultant diminution in their ultimate weight.

The record shows that the rainfall on the lands tributary to this system's watershed, in the year 1912, was 30 per cent below the normal rainfall and that in only two years out of the last twenty-five years was the rainfall less than in 1912. The year 1912 is the driest of the years for which records of water distribution have been kept by defendant. The year 1913, while not as dry as the year 1912, nevertheless shows a supply of water less than that of the average year. On the other hand, the evidence shows that in 1914 defendant had available more than sufficient water to supply the needs of all its consumers and that even during the month of August, the critical month of the year, considerable water ran to waste.

The inadvisability of taking the driest year known, or one of the driest years, as the measuring rod by which to determine the capacity of an irrigation system is too patent for comment. If the acreage to be irrigated under any irrigation system is only that which can be irrigated comfortably and with entire satisfaction to everybody concerned during the driest year, it is at once obvious that the capacity of the system will be seriously limited, and that during most years, large quantities of water will run to waste. Large areas of land which would otherwise be cultivated and thereby add to the prosperity of the community would be compelled to remain dry and barren. It is better for the welfare of the State that the lands under an irrigation system should suffer some inconvenience in the driest years than that large amounts of water should run to waste in all the other years. In this connection attention should be drawn to the testimony in this case clearly showing that if olive trees, to which the defendant gave particular consideration, receive water in June of any year, they will not die even if they receive no further irrigation during the year. The effect of a failure to receive water during the month of August would simply be a more or less shriveling of one year's crop, with a consequent impairment in the value thereof.

Mr. C. H. Loveland, one of this Commission's hydraulic engineers, testified after an exhaustive investigation into the capacity of defendant's system, that a minimum safe service capacity of the system, with canals carrying water to capacity when possible, and with the exercise of due care in the operation of the system, is 4,544 acres. The acreage

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actually irrigated during the years 1909 to 1914, inclusive, has been as follows:

Year	Acres under irrigation
1909	1,984
1910	1,984
1911	1,984
1912	1,984
1913 (about)	2,100
1914	2,357.95

Mr. Loveland, in making his computation, assumed a duty of water, under good management of the system, of 1.4 feet per acre per annum. From the actual records of the Palermo company, he determined the percentages of the total amount of water delivered which are supplied during each month of the irrigating season. He assumed that in dry years it would be possible to extend the irrigation period from four weeks to five weeks during July, August and September, and particularly that lands irrigated during the last week in July could go without further irrigation until the first week in September. As his type year for determining the minimum safe service capacity of the system, he used the year 1912 up to and including the month of August, but neutralized the rainfall for September, for the reason that an unusually heavy rain fell in September, 1912, resulting in a much smaller irrigation in September than is normally the case during that month. The water supply in the ditches of the Palermo company during each day of June to October, inclusive, of 1912, was taken from the records of the United States Geological Survey. The losses in the canals and laterals were the losses as shown by actual measurements on defendant's system, covering a wide range of conditions from April to August, without deductions by reason of excessive losses to which reference will hereinafter be made. Based on these data, Mr. Loveland then presented a tabulation of the use of water in the various ditches and laterals of the Palermo company, finally reaching the conclusion, as heretofore stated, that the minimum safe service capacity of the system is 4,544 acres.

Attention should be drawn to the fact that this computation is based on the driest year during which records of distribution have been kept by the Palermo company and on the driest year except two during the twenty-three years during which rainfall records at Palermo have been kept by the United States Weather Bureau.

Defendant presented certain objections to Mr. Loveland's computations, based principally on the duty of water, the available supply of water and the time when the water must be supplied.

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The data with reference to the acre feet supplied and the acres under irrigation during the year 1913 were reported by Mr. Loveland to be incomplete, for the reason that he had been unable to secure the acreage irrigated and the acre feet supplied to the Palermo company's Oroville consumers. The record does not show whether the use of this additional data, if he had been able to secure it, would have increased or diminished the average depth per acre of 1.31 feet assumed by Mr. Loveland for the year 1913. As contrasted with Mr. Loveland's duty of 1.4 feet of water per acre per annum, defendant claims an average during the last six years of 1.57 feet per acre per annum. This figure, however, is based in part on the amount of water supplied in the years 1909, 1910 and 1911, before the company entertained any fears as to the sufficiency of its water supply and before any careful means were taken to conserve the supply.

Referring to the available supply, defendant points out that the rainfall in September, 1912, was unusually heavy, which fact was reported by Mr. Loveland and commented upon by him. By reason of this fact, Mr. Loveland, as already stated, made allowances for the September supply.

Much testimony was presented by the defendant to show that the olive and orange trees under its system could not conveniently go for five weeks between the last week in July and the first week in September without irrigation. Defendant claims that the periods for irrigating these trees should not extend beyond twenty to thirty days, particularly in the months of July, August and September, and considerable evidence was presented by consumers of water under the system, in support of this contention. Mr. Loveland's computations show that if the maximum period of irrigation was four weeks instead of five weeks, the minimum safe service capacity of the system, assuming the other bases of his computations to be correct, would be 3,594 acres.

As bearing further on the question of acreage which can be irrigated under this system, I desire to draw attention to the evidence as to the amount of water which can be saved or added for the use of consumers under this system.

Mr. J. A. Totman, who is defendant's ditch walker from the point of diversion to the Whitewashed Trees and whose duty it is to repair the flumes on this portion of defendant's system, testified that there are a great many old flumes on the ditch and that it is hard to keep them tight, although he does all the caulking he can. Mr. George S. Nickerson, a witness for the complainant, testified that there is a larger leakage or waste of water through the company's flumes than is necessary and that the proper maintenance of these flumes would result in saving a considerable amount of water. He reported that at least 30 miner's inches of water is leaking through the flume nearest the intake

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and that there is a total preventable loss between the intake and Whitewashed Trees of 2.94 second feet of water or 147 miner's inches. Mr. Loveland testified that by repairing the flumes so as to prevent their extraordinary leakage, approximately 3½ second feet of water, amounting to 175 miner's inches, could be saved. Both Mr. Nickerson and Mr. Loveland recommended that the flumes be lined with the roofing paper which has been successfully used on the system of Cuyamaca Water Company, in San Diego County. They testified that this work could be done for $2,800.00.

Attention was further drawn to the fact that a considerable amount of water has hitherto been supplied by this system to dredgers and that at the time of the hearing three dredgers were still in operation. Based on computations made by Mr. Arthur L. Adams, who testified in behalf of the Palermo company, in Application No. 337, it was assumed in this proceeding that each dredger uses an average of .73 second feet of water at the Whitewashed Trees. On this basis, the three dredgers still in operation would use 2.19 second feet of water at the Whitewashed Trees, or 109.5 miner's inches. The testimony shows that one of the dredgers will cease operation very soon, that another will probably be dismantled in June, 1915, and that the third will probably operate for about two years longer. On the basis of five acres of land irrigated by 1 miner's inch of water, the water used by the remaining three dredgers could irrigate, if applied at Whitewashed Trees, 547.5 additional acres of land. Some losses, of course, would be incurred in the transmission of the water to the point of application to the land.

In accordance with this Commission's suggestions to the Palermo company in Application No. 337, Vol. 3, Opinions and Orders of the Railroad Commission of California, page 1247, the company in the spring of 1914 put into effect a rotation system of delivery of water for the purpose of assisting in the conservation of the water of this system. The testimony shows that the institution of the rotation system has resulted in materially increasing the efficiency of the system.

Mr. A. S. Riehl, the Palermo company's superintendent, testified that a large number of the consumers under the system ask for more water than is necessary to irrigate their lands and that the consumers waste a considerable amount of water by running it through the roads and creeks.

Defendant's system has no storage capacity. As the system is at present constructed, there is no way by which the company can conserve the large amounts of water which run to waste during most months of the year, so as to use the water to tide over the critical month of August in dry years. Mr. R. W. Hawley, this Commission's hydraulic engineer, presented a report on possible storage under the system, which report was introduced in evidence as Railroad Commission's Exhibit No. 3.

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In this report Mr. Hawley draws attention to a possible reservoir site covering portions of sections 28 and 33, in township 19 north, range 4 east, M. D. B. and M., together with the approximate location of a possible canal carrying water from a reservoir at this site to lands about Palermo. Mr. Hawley reports that this damsite is such as to be particularly well adapted for a multiple arch dam, such as has been constructed near Bangor on Dry Creek. Mr. Hawley reports that there is a sufficient supply of water available in the south fork of the Feather River to fill such reservoir by the flow between January and April of any year, and the construction of such reservoir will practically double the capacity of the system. While the construction of such reservoir is not taken into consideration in this proceeding for the purpose of ascertaining the minimum safe service capacity of the system, the matter is drawn to the Palermo company's attention for its serious investigation and consideration. It goes without saying that the Railroad Commission is very much interested in the development of an additional water supply on the part of the Palermo company, so as to enable the company to irrigate not merely all the lands which it has already sold with agreements to supply water, but also the remaining acreage in the Palermo colony still owned by the Palermo company. Needless to say, it is distinctly to the advantage of the Palermo company to develop a supply of water sufficient to irrigate this entire additional acreage, so as to enable the company to sell its remaining lands at considerably in excess of the value of the land without water.

If we confine our attention solely to the water at present used by the three remaining dredgers, amounting to 2.19 second feet, and assume a saving of 2 second feet from the proper repair of the Palermo company's flumes, it is apparent that from these two sources alone there will be available for the irrigation of additional lands in the driest years, 4.19 second feet of water, amounting to 209.5 miner's inches or 259.79 acre feet. The records of defendant's system show that 18 per cent of the entire water delivered to consumers, or .25 feet for each acre, is normally delivered in the month of August. On this basis, 259.79 acre feet of water could irrigate 1,039.16 additional acres of land in August, less the losses to the point of application to the land, which losses resulting from the placing of this additional amount of water in the defendant's canals, would not be large.

I find as a fact from the evidence in this proceeding that with reasonable repair of the defendant's flumes and a reasonably careful management of the system and the use of the water now delivered to the three dredgers, from time to time, as needed, the Palermo company can reasonably and safely irrigate at least 750 to 1,000 acres of land in addition to those now irrigated by the company. I am of the opinion that I could reasonably fix the figure at 1,000 acres but in order to

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err on the side of safety, I am finding between 750 and 1,000 acres. This finding is made without reference to increased supply resulting from the construction of a reservoir and without reference to the use of the waters of McCabe Creek, from which source engineers Nickerson and Loveland testified that .25 second feet could be secured by the construction of a ditch conveying these waters into the Palermo company's main canal.

Assuming that at least 750 to 1,000 acres of additional land can safely and reasonably be irrigated by the Palermo company, I am next confronted with the question whether there is any reason why the Palermo company should not be directed to supply water for the irrigation of complainant's acreage, amounting to about 20 acres. Defendant presented a list of some twenty-three persons owning land outside of the Palermo colony who have made request for water. As defendant's first duty, apart from the consumers near Oroville who were taking water from the system at the time the Palermo company acquired it, is to supply water for the irrigation of the lands of the Palermo colony, it will not be necessary to give consideration herein, at the present time, to the claims of these outside land owners. Defendant also presented a list of land owners within the Palermo colony who have made demand for water and who have been refused. Defendant did not report the acreage owned by these persons and the amount of water desired by them. In cases of this kind in which a water utility is directed to supply additional land with water and there is a possibility of an inadequate supply for the irrigation of all the lands which may desire water, some principle must be established to determine who shall have the right to the available water. In the present proceeding, the land owners who have bought land from the Palermo company and who are within the area to which the Palermo company's water has been dedicated, have the first right to the water. If none of these lands had been planted to trees, the first claimant in point of time would presumably have the first right, provided that he shows within a reasonable time that he still desires the water. If he makes no such showing within a reasonable time, the man who made the next demand in point of time would usually have the first right, and so on. In the present proceeding, however, this particular complainant not merely made his demand within a few months after the company adopted the policy of refusing water to certain purchasers of its lands, but also has planted its acreage to trees which are in need of irrigation from defendant's system. On the facts of this case, I find that the complainant herein is at the present time entitled to receive water from defendant's system at defendant's regular rates for the irrigation of the lands herein described.

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Claim was made by complainant that the Palermo company has discriminated against complainant in that it has permitted other lands which had not been irrigated within five years from the date of the conveyance to receive water, while denying the same privilege to complainant's land. The evidence shows that the Ed Elsner lands were deeded by the Palermo company on April 7, 1907, and that the Palermo company permitted the owner thereof to commence the use of water for the irrigation of trees thereon in May, 1912, being a few days beyond the five year period. The Palermo company permitted W. P. Hammon, its largest consumer, to irrigate 1¾ acres which was used as a garden plot, in lieu of other land theretofore irrigated and used for the same purpose. This tract of 1¾ acres had not received water within five years from the date of the deed of conveyance. The testimony also shows that Mr. Hammon irrigated a tract of about 2½ acres planted to 250 olive trees and located on the northwest corner of the Daily & Sargent tract, for the first time in 1914, although this tract had not been irrigated for five years. The evidence further shows that Mr. Hammon's representatives twice called upon the president of the Palermo company for the purpose of securing water for another tract of 70 acres on which it was desired to plant olive trees, but that the Palermo company refused the water. The owners of this tract planted olive trees on the land in May, 1914, taking the water to irrigate the trees from the hydrants of the Palermo company. The Palermo company's defense with reference to the last two transactions is that it did not know that the water was being used on these two tracts. This defense is made notwithstanding the fact that the Palermo company's attention had been twice specifically drawn to the fact that Mr. Hammon desired water for these 70 acres. I am willing to accept the statement of the Palermo company that it did not know that water was being used on these tracts. Even assuming that discrimination could not be proved without showing a knowledge of the facts on the part of the Palermo company, the instances are significant as bearing on the question of the degree of care which has hitherto been exercised by the Palermo company's employees in watching the distribution of the water and taking care to conserve the supply. In view of the findings herein made, it is not necessary to give further consideration to this branch of the case. When complainant receives water such discrimination, if any, as may have existed against him will be removed.

I submit the following form of order:

ORDER.

Public hearings having been held in the above entitled proceeding and the proceeding having been submitted and being now ready for decision,

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It is hereby ordered that Palermo Land and Water Company, within twenty days from the date of the order herein, supply and thereafter continue to supply water, at the Palermo company's regular rates for irrigation now or hereafter in effect, for the irrigation of lot No. 1 of block 87, lot No. 8 of block 88 and the westerly 3.65 acres of lot No. 1 of block 88, of subdivision No. 1 of the Palermo citrus tract.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1915.

Decision No. 2499, grade crossing; not printed. See end of volume.

DECISION NO. 2500.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE BY IT OF CERTAIN RIGHTS AND PRIVILEGES UNDER FRANCHISE HERETOFORE GRANTED TO IT BY THE CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA.

Application No. 844.

Decided June 19, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

ORDER OF DISMISSAL.

Oro Electric Corporation having, on November 25, 1913, filed with this Commission the above entitled application for a certificate of public convenience and necessity to exercise certain rights and privileges alleged to be granted to applicant by the city of Stockton in Ordinance No. 566 of said city, approved December 30, 1912, and the Supreme Court of California having, on February 24, 1915, in *Oro Electric Corporation* vs. *Railroad Commission of the State of California,* reported in Vol. 49, California Decisions, page 286, rendered a decision holding that the city of Stockton did not have power to grant to Oro Electric Corporation the very franchise which is the subject of this application, and it appearing, therefore, that this is an application for authority to exercise rights under a franchise which the city of Stockton did not legally have the power to grant to applicant,

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It is hereby ordered that this application be and the same is hereby dismissed.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of June, 1915.

DECISION No. 2501.

IN THE MATTER OF THE APPLICATION OF THE OCEAN SHORE RAILROAD COMPANY FOR PERMISSION TO INCREASE ITS CARLOAD RATES ON SAND, GRAVEL AND CRUSHED ROCK FROM AND TO POINTS ON ITS LINE.

Application No. 1312.

Decided June 19, 1915.

Applicant maintains at present a rate of 30 cents per ton on crushed rock, sand, gravel, etc., between Ebalstone and San Francisco, and certain other points on its line which it contends is unremunerative and out of proportion with its other schedules of freight rates and petitions for permission to increase same to 40 cents per ton, to which application strenuous objection is made by E. B. & A. L. Stone Company who contend that they have a contract with applicant, agreeing to maintain the present rate which induced them to construct their quarry at Ebalstone.

Held, After review of conditions under which applicant operates and the returns it receives from the commodity in question, that a rate to San Francisco of 35 cents from Ebalstone, 40 cents from McNee and Pilarcitos and 35 cents from Brighton is a just and reasonable rate for such service, such rates to become effective within twenty days.

A. C. Green, I. N. Randall and *J. W. Crosby*, for Applicant.

H. C. Beach, for Protestant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application on the part of the Ocean Shore Railroad Company for authority under section 63 of the Public Utilities Act to increase certain carload rates on sand, gravel, crushed rock, etc., from various points on its line to Paoli and San Francisco.

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The present and proposed rates in cents per ton and the rate per ton mile are shown in the following table:

Commodity	Stations	Miles	Present		Proposed	
			Rate per ton	Rate per ton per mile	Rate per ton	Rate per ton per mile
Sand and gravel, carloads.	To San Francisco (proper) from—					
	Brighton	14.8	$0 25	1.7	$0 40	2.7
	McNee	22.5	30	1.33	40	1.8
	Pilarcitos	29.3	30	1.02	40	1.4
Crushed rock, granite spalls, gutter rock, etc., carloads.	Ebalstone	16.6	30	1.8	40	2.4
	Ransome	18.9	30	1.6	40	2.1
Crushed rock, granite spalls, gutter rock, etc., carloads.	To Paoli from—					
	Ebalstone	8	25	3.12	40	5
	Ransome	10.3	25	2.42	40	3.9
Sand, carloads	To San Francisco S. P. Co. transfer (when destined beyond) from—					
	Brighton	13.8	25	1.8	35	2.5
	McNee	21.5	25	1.16	35	1.6
	Pilarcitos	28.3	25	.883	35	1.2
Crushed rock, etc., carloads.	Ebalstone	15.6	25	1.6	35	2.1
	Ransome	17.9	25	1.4	35	1.85

The E. B. & A. L. Stone Company, hereinafter referred to as the Stone company, protested the granting of the application on the grounds that the present rates are just and reasonable and any increases therein would force the abandonment of its crushing plant at Ebalstone which the predecessor of the applicant induced it to install at great expense upon the promise that the present rates would be maintained.

Case No. 180, 4 C. R. C. 1328, in the matter of the valuation of the Ocean Shore Railroad Company, was made a part of this proceeding, and in order that the history of the company may be understood the following extracts from the decision in that case are pertinent:

(1330)

"The properties of the present Ocean Shore Railroad Company have been in control of the following legal owners and managements:

1. Ocean Shore Railway Company, from April 18, 1905, to December 6, 1909.

2. F. S. Stratton, receiver, from December 6, 1909, to February 2, 1911.

3. Bondholders of the Ocean Shore Railway Company, from February 2, 1911, to November 27, 1911.

4. Ocean Shore Railroad Company, from November 27, 1911, to date of this report.

The Ocean Shore Railway Company, a California corporation, was incorporated on May 18, 1905, to construct and operate a single or double track line from San Francisco to Santa Cruz, a

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distance of 80.26 miles; the road to follow as nearly as possible the shore line of the Pacific Ocean. The line was to run through the city and county of San Francisco, through San Mateo County, and through Santa Cruz County.

The plans for this line called for a double track electric railway from San Francisco to Santa Cruz, and construction commenced in 1905 from both termini. In the same year contracts were entered into with certain firms for a steam power plant for electric power generation and for a large amount of electrical equipment. These contracts involved an expenditure of over seven hundred thousand dollars ($700,000.00) and are mentioned to show the scale on which the work was undertaken. It was the intention of the company to push the work of construction to the earliest possible conclusion, and work was being actively prosecuted in the latter part of 1905 and the early part of 1906. Steel for the substations and for other structures was ordered and part of it delivered."
(1331)

"The earthquake of April 18, 1906, did considerable damage to the roadbed, and the period of financial stringency which followed the San Francisco disaster greatly embarrassed the company, which from that time on found itself in continually rising financial difficulties. It may be stated that this disaster was the initial cause for the bankruptcy, which finally came about in December, 1909. When the shortage of money became manifest on every side the electric construction and equipment contracts were abrogated, and although the company tried to maintain itself by repeated assessments on the capital stock, and by finally attempting to dispose of its bonds in one hundred dollar denomination, these measures proved to be of no avail. * * * In 1905, at about the same time as the Ocean Shore Railway Company was incorporated, there was incorporated also the Shore Line Investment Company, which dealt in lands along the route of the railway company. It was the intention of the railway to establish a fast suburban service between a number of newly laid out towns and San Francisco, and many people had invested in the lands of the Shore Line Investment Company. The road was therefore opened for operation as fast as portions of it were completed, the opening of the first section occurring in 1907. The books of the company were changed to an operating basis on January 1, 1909, and the last portion of the road was put in operation on May 16, 1909. At this time the northerly portion of the line from San Francisco south had reached Tunitas, a distance of 38.2 miles, and the southerly end, from Santa Cruz northerly, had reached Swanton, a distance of 15.5 miles. There was left uncompleted "the gap" between Tunitas and Swanton, a distance of 26.56 miles. No new construction was undertaken since 1909, and the road remains in this unfinished condition today."
(1332)

"On October 9, 1911, the Ocean Shore Railroad Company was organized, its purpose being to engage in the business of a common carrier and to acquire parts of and complete a railroad from San Francisco to Santa Cruz. This new company inherited a large portion of the difficulties of the old company, and has not yet been able to finish its program, namely, the making of the Ocean Shore into a through line from San Francisco to Santa Cruz."

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(1333)

"Beginning at Twelfth and Mission streets in San Francisco the line follows the city streets for approximately 2.4 miles to the company's shops, where it meets the freight line extending from a junction with the joint Southern Pacific and Santa Fe tracks at Army and Illinois streets. This portion of the line is operated by electricity, the power being purchased and distributed by catenary trolley system with steel center pole and bracket construction on the Twelfth street line, and a simple span suspended trolley wire on the Army street line. From the shops the line follows the bed of Islais Creek to a summit near Ocean View, and thence to the shore of the Pacific Ocean. Upon reaching the ocean the line is built along Mussel Rock Bluffs for some two miles, with a maximum elevation of about one hundred and fifty (150) feet above the water. These bluffs are of soft material, having cohesion enough to permit steep slopes when dry, but being of the consistency of quicksand when wet. On miles 11 and 12 alone over one and one half million cubic yards were moved, this including excavation and pay embankment only, and not overhaul. The track at one point is today some fifty feet inland from its original location, the inroads of the ocean at the foot of the bluff having forced this move. This part of the line has been in the past and will always be expensive to maintain. Leaving the bluffs the road crosses the mouths of several fertile valleys with comparatively little heavy work until San Pedro point is reached, in mile 19; then for approximately four miles the line continues along the steep bluffs overlooking the ocean with the grade of from one hundred to two hundred and fifty feet above the water. The slopes here are very precipitous, and the work was heavy, and in the neighborhood of two million cubic yards of material, mostly loose and solid rock, were moved northerly four miles. Southerly from these bluffs the road again crosses the mouths of several fertile valleys and lies on the table-land some distance back from the shore. Purissima and Lobitas creeks are crossed on high single track trestles. North of Tunitas the bluffs are again encountered and heavy work was necessary, until just south of Tunitas the track crosses Tunitas Creek, and a few rail lengths beyond the end of track is found, this being the southerly end of the northerly portion of the road."

Testimony would indicate that conditions have not improved since the decision was rendered June 29, 1914, in Case No. 180.

The Ocean Shore Railroad has been operated at a loss in the past with the exception of the year ending June 30, 1913, which showed a net income of $5,312.73. For the year ending June 30, 1914, the income was insufficient to cover operating and other expenses by $45,263.31 and this deficit, applicant contends, may be attributed largely to the insufficiency of compensation received for the transportation of sand, gravel and crushed rock between points on the San Francisco division.

The following exhibit introduced at the hearing shows the apportionment of revenue and expenses as between the Santa Cruz and the San Francisco divisions for the year ending June 30, 1914:

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	Totals		Divisions			
			Santa Cruz		San Francisco	
Rail operation:						
Revenue		$264.050 21		$24,679 92		$239,370 29
Expenses		273,924 73		24,903 08		249,021 65
Net deficit		$9,874 52		$223 16		$9,651 36
Tax accruals		14,577 99		1,334 44		13,243 55
Operating loss		$24,452 51		$1,557 60		$22,894 91
Other income:						
Miscellaneous rents	$3,045 31				$3,045 31	
Other income	181 92	3,227 23			181 92	3,227 23
Totals		$21,225 28		$1,557 60	$1,557 60	$19,667 68
Other deductions:						
Hire of equipment	$5,718 75		$411 30		$5,307 45	
Miscellaneous rent deductions	13,685 60		83 10		13,602 50	
Miscellaneous deductions	4,633 68	24,038 03		494 40	4,633 68	23,543 63
Totals		$45,263 31		$2,052 00		$43,211 31

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In another exhibit applicant undertakes to segregate the total operating expenses of $249,021.65 charged to the San Francisco division on the foregoing statement between the freight and passenger operations for the purpose of showing the expense incident to the handling of the particular traffic upon which it seeks to increase its rates. This exhibit is as shown below:

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EXHIBIT "D."

Operating Expenses, San Francisco Division only, Year ending June 30, 1914.

Divided between freight and passenger service as directed by the Interstate Commerce Commission, as per their Circular No. 3, March 19, 1914.

	Total	Directly assigned		Apportioned		Unapportioned
		Freight	Passenger	Freight	Passenger	
Maintenance of way and structures	$71,568 59					$71,568 59
Maintenance of equipment	53,231 70	$11,190 75	$9,377 60	$9,213 74	$13,103 23	10,346 38
Traffic expenses	6,068 10	106 30	2,905 14			3,056 66
Transportation expenses	93,380 54	10,962 29	12,412 27	36,283 31	30,497 90	3,224 77
General expenses	24,772 72	214 00	163 25	56 89	81 47	24,257 11
Totals	$249,021 65	$22,473 34	$24,858 26	$45,553 94	$43,682 60	$112,453 51

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It will be noted that the expense assigned direct and apportioned to the freight and passenger service is approximately 55 per cent of the entire expense of the line and that the remainder is unapportioned. This latter amount applicant divided equally between freight and passenger service, this being the approximate ratio that the aggregate of the directly assigned and apportioned freight expense bears to the corresponding passenger expense and by this method the applicant ascertained the aggregate expense for each service as shown in the following table:

	Freight	Passenger
Expenses directly assigned as per Exhibit "D"	$22,473 34	$24,858 26
Expenses apportioned in accordance I.C.C. Circular 3, of March 14, 1914, as per Exhibit "B"	45,553 94	43,682 60
Expenses unapportioned, as per Exhibit "D," divided equally between freight and passenger service	56,226 76	56,226 76
Totals	$124,254 04	$124,767 62

Into the aggregate freight expense applicant divided the total tons one mile for the San Francisco division for the fiscal year ending June 30, 1914, which it states approximates 4,731,168, and found that the cost of handling all freight on its San Francisco division for that period was .026 cents per ton mile. This cost figure the applicant compared with the revenue per ton mile accruing during the same period from the sand and rock traffic of .01002 to .01819 cents, dependent on the point of origin of the traffic, and concludes that the sand and rock traffic is not contributing its fair share of the operating expenses. As heretofore stated, the basis upon which the entire expenses of the system was apportioned to the separate divisions was not submitted nor was the detail data from which the applicant ascertained the ton miles for the San Francisco division furnished, but assuming that the segregation used in reaching the conclusion is correct, it appears that the entire freight traffic affords a return over and above the cost of operation and that the deficit is wholly chargeable to the passenger service. Thus on the basis of apportionment used the applicant's operating expense chargeable to freight service is $124,254.04 and to passenger service $124,767.62, whereas its revenue from freight traffic during the same period amounted to $149,397.22, while its passenger revenue amounted to but $89,973.09. Therefore, the freight service yielded $25,143.18 over and above operating expenses, while the passenger revenue was insufficient by $34,794.54 to meet the expenses incident to the operation of that service. By this conclusion it is not meant to imply that, if the passenger service is conducted at a loss and there is a slight profit from

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the freight business, such showing would be ground for refusing to authorize an increase in the sand and rock rate, nor would the fact that the crushed rock and sand traffic is carried for something less than the average cost of carrying all freight establish the conclusion that the rates are too low and should be increased. I merely wish to emphasize the speculative nature of the segregation of the expenses and its result.

Considerable testimony was offered by protestant, the Stone company, to the effect that applicant's line had not been properly constructed, that its roadbed was not ballasted, and that its operation was therefore expensive and inefficient, the object of the testimony being to prove that if the Ocean Shore were a completed railroad and efficiently operated no increase in the sand and rock rates would be necessary.

In further support of its contention that the rates should not be advanced protestant introduced as evidence copy of a 20-year contract dated April 20, 1908, between the Ocean Shore Railway Company, predecessor of applicant, and themselves, wherein it was agreed that sand and gravel in carload lots would be transported from Rockaway (Ebalstone) to any point on the rails of the Ocean Shore in San Francisco at rate of 30 cents per ton and, when shipments were destined to points beyond on connecting lines, at rate of 25 cents per ton, and relying upon the terms of this contract the Stone company located its crushing plant at Ebalstone. With reference to contracts of this character, the Commission has held in a number of cases and is supported by court authorities that it is not bound by such contracts but will always give them careful consideration in the readjustment of rates.

Exhibits were entered making a comparison of the crushed rock rates of applicant with those of other carriers in the State of California, but as conditions controlling are dissimilar such comparisons are of little value in deciding this case.

The crushed rock traffic is handled largely in extra freight trains from Ebalstone to car shops, San Francisco, and testimony shows that because of the heavy grades between these points but 600 tons gross weight or about seven large cars of rock can be handled by a locomotive. It is also of record that the track for the loading of sand at McNee forms a semicircle with curvatures of from 18 to 30 degrees over heavy grades, that there are no spur track facilities, and therefore all cars to be switched must be dragged 1,300 feet to the main line and only three loaded cars can be handled at a time. In San Francisco the movement is by electric motor from car shops to sand bunkers, Twelfth and Harrison streets, and rock bunkers, Twelfth and West Mission streets, a distance in both instances of approximately 2.5 miles. The tracks

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serving the sand bunkers hold six cars but inasmuch as only two cars can be unloaded at a time, special switching is necessary, for which service no extra charge is assessed. At the Twelfth and West Mission streets bunkers equally unfavorable conditions prevail, the tracks being located over a pit divided into compartments to accommodate the three grades of commercial rock, necessitating the sorting of cars, more or less special switching and the awaiting of orders from consignee before cars can be spotted at the bunkers. Further, if bunkers are filled with any particular class of rock, cars carrying like rock must be held until space is provided.

It will thus be seen that applicant is operating its line of railroad under many difficulties, the heavy grades, curved track and high cost of maintenance during the winter months making impossible the handling of traffic at rates which would be considered fair under normal conditions. This is particularly true as to the transportation of sand and rock: The location of the sand pit at McNee, from an operating standpoint, is unfortunate and expensive, the unloading facilities maintained by the Stone company in San Francisco are unusual and difficult to serve, and the dual steam and electric motive power with limited tonnage per train adds to the cost of the service. It is also apparent from the testimony in this proceeding and in case No. 180, *supra*, that the property has been unfortunate financially from its inception and is now being maintained by funds secured through assessments upon its stockholders. I am convinced, however, that the present management is making every effort to protect the property and render the best service its facilities will permit.

The showing made by applicant illustrative of the cost of transporting sand and rock, while not conclusive as to what the proper rates should be, is sufficient, in my opinion, to establish the fact that the present rates are unremunerative, and, after giving careful consideration to all of the evidence, I recommend that the application be granted in part and the establishment of the following rates be permitted:

Commodity	From	To	*Rate in cents per ton, 2,000 pounds	†Rate in cents per ton, 2,000 pounds
Sand and gravel	Brighton	San Francisco	35	30
Sand and gravel	McNee	San Francisco	40	35
Sand and gravel	Pilarcitos	San Francisco	40	35
Crushed rock, granite spalls, grout, gutter rock, macadam, riprap rubble and waste rock	Ebalstone Ransome	San Francisco	35	30

*When delivery is made on tracks of Ocean Shore Railroad in San Francisco.
†Proportional, on shipments destined beyond San Francisco.

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I submit the following form of order:

ORDER.

Application having been made by the Ocean Shore Railroad Company for authority under the provisions of section 63 of the Public Utilities Act to increase certain rates on sand, gravel, crushed rock, etc., from various points on its line to Paoli and San Francisco, and a hearing thereon having been held, and the Commission being fully apprised in the premises,

It is hereby found as a fact that the rates hereinafter in this order authorized to be charged by Ocean Shore Railroad Company are just and reasonable rates and basing its order on this finding of fact and upon the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that Ocean Shore Railroad Company is hereby authorized to publish and file a tariff, to become effective within twenty days from the date of this order, embodying the following rates:

Commodity	From	To	*Rate in cents per ton, 2,000 pounds	†Rate in cents per ton, 2,000 pounds
Sand and gravel	Brighton	San Francisco	35	30
Sand and gravel	McNee	San Francisco	40	35
Sand and gravel	Pilarcitos	San Francisco	40	35
Crushed rock, granite spalls, grout, gutter rock, macadam, riprap rubble and waste rock	Ebalstone Ransome	San Francisco	35	30

*When delivery is made on tracks of Ocean Shore Railroad in San Francisco.
†Proportional, on shipments destined beyond San Francisco.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of June, 1915.

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DECISION No. 2502.

TOWN OF HOLLISTER

vs.

HOLLISTER WATER COMPANY.

Case No. 639.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES OF HOLLISTER WATER COMPANY FOR WATER SUPPLIED IN UNINCORPORATED TERRITORY IN SAN BENITO COUNTY, CALIFORNIA.

Case No. 709.

IN THE MATTER OF THE APPLICATION OF HOLLISTER WATER COMPANY FOR AN INCREASE IN RATES TO BE CHARGED BY AND PAID TO IT FOR FURNISHING, DISTRIBUTING AND SELLING ITS WATER TO THE PUBLIC USERS THEREOF AND ESPECIALLY TO THE TOWN OF HOLLISTER AND THE INHABITANTS THEREOF.

Application No. 1489.

Decided June 21, 1915.

Complaint of the town of Hollister attacks the rates of defendant water company within such town as exorbitant and unjust, the Commission's investigation bringing into question rates of defendant in all territory served, subsequent to which, the water company files an application petitioning for an increase, contending that its present schedule does not permit of a fair return upon the value of its property.

Held, An investigation showing that the present rates of Hollister Water Company are unjust in that they do not provide an adequate return, the following schedule is established and ordered into effect July 1, 1915: $1.25 per month for 400 cubic feet or less, 30 cents per 100 cubic feet between 400 and 1,000 cubic feet, 20 cents per 100 cubic feet between 1,000 and 10,000 cubic feet and 15 cents per 100 cubic feet used per month in excess of 10,000 cubic feet. The town of Hollister to pay $100.00 per month for fire service.

Held, As regards the contention of the town of Hollister that its franchise to the water company prohibits a charge for fire service: That this Commission has repeatedly held that it is not bound by contracts, entered into between a utility and an individual, in the fixing of rates; that there is no material difference between such contracts and one between a city and a utility. That a municipality can not, through the granting of a franchise, exclude the Commission from properly exercising its jurisdiction over the rates of the utility receiving same.

Geo. H. Moore, for Town of Hollister.

Seth Mann, for Hollister Water Company.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

The town of Hollister filed a complaint against Hollister Water Company, alleging that the rates charged that company's consumers within the town of Hollister for water were excessive and unjust. As this complaint did not embrace consumers of this company outside of the city of Hollister, the Commission, to make its investigation and determination complete, instituted proceedings on its own motion in Case No. 709. Subsequently Hollister Water Company applied, in Application No. 1489, for an increase of all of its water rates.

By agreement between all parties these three matters were consolidated for hearing.

Hollister Water Company is furnishing water through 800 taps to the inhabitants of Hollister and vicinity. It has about eleven miles of service mains, in addition to ten miles of transmission line from Grass Valley, the source of the major water supply. Before the Grass Valley supply was developed, water was secured from wells within the townsite, but general dissatisfaction existed with the quality of this water and after the development of the Grass Valley supply the town plant has been kept as a reserve to serve during emergency or drought periods.

The supply of water was inadequate in 1913, partly due to excessive use under the flat rate schedule. It was, therefore, decided to meter the service, with a resultant decrease in use as well as in revenue, as shown by the following table:

Gross revenue, 1912	$20,403 00
Gross revenue, 1913	20,482 00
Gross revenue, 1914	19,430 00

Valuations of the company's property were prepared by Sloan & Robson, for the company, and by the Commission's engineers. The differences between these two valuations in relation to physical properties are immaterial and may be disregarded. These two valuations, however, vary widely as to rights of way and water rights.

The company's engineers estimate the value of their water rights to be $52,260.00 and rights of way $10,350.00, making for these two items $62,610.00, as compared with a valuation placed on these items by the Commission's engineers of water rights $5,400.00 and rights of way $1,490.00, making a total for these two items of $6,890.00.

The company's engineers find a total present or depreciated reproduction value of $242,863.00 as compared with the Commission's engineers' value of $181,784.00.

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The rates now in effect are:

$1.50 for 4,285 gallons or less per month.
.35 per 1,000 gallons excess up to 10,000 gallons.
.30 per 1,000 gallons excess from 10,000 to 50,000 gallons.
.25 per 1,000 gallons excess from 50,000 gallons.
.10 per 1,000 gallons for municipal use.
.15 per 1,000 gallons for county use.

The company asks that rates be established as follows:

$1.50 for 400 cubic feet or less per month.
.37½ per 100 cubic feet excess for next 200 cubic feet.
.30 per 100 cubic feet excess for next 400 cubic feet.
.25 per 100 cubic feet excess from 1,000 to 10,000 cubic feet.
.20 per 100 cubic feet excess above 10,000 cubic feet.
$4.00, $3.00 and $2.50 per month for fire hydrant rental.

The town of Hollister asks that rates be established as follows:

$1.00 for 4,285 gallons or less per month.
.20 per 1,000 gallons excess up to 20,000 gallons.
.15 per 1,000 gallons over 20,000 gallons.

If the company's valuation is determined to be correct, the rates it asks for are justified and would return about 7 per cent net profit on this value. On the other hand, if the Commission's engineers' value is adopted, rates somewhat higher than the existing rates would be necessary in order to produce 7 per cent return. But the rates that the city asks to be established can not be justified upon any basis of valuation as shown by any of the evidence.

I shall not find definitely on the value of this plant in these proceedings as I do not consider it necessary. I believe that the present rates are not reasonably remunerative to the company, and, furthermore, I do not believe that the spread of these rates brings about a just distribution of the burden among the consumers.

I shall, therefore, fix what I consider to be a just schedule of rates which, upon the evidence in these cases, will produce to the company a substantial increase in total revenue, and will, at the same time, permit of the smaller consumers obtaining their water at a less minimum rate than they now must pay.

The minimum now fixed is $1.50 per month for 572 cubic feet, and the evidence shows that the average domestic use by 50 per cent of the consumers has been 400 cubic feet per month and 32 per cent use less than 300 cubic feet. Therefore, I have reduced this minimum to $1.25 for 400 cubic feet with a view to lessening the burden of the people who only use a small amount of water and can not afford to pay a heavy rate

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therefor. On the other hand, the schedule here proposed increases the rate to some extent to the larger consumers.

At present the town of Hollister pays nothing for water for fire purposes and this I consider results in an unjust burden being placed upon the consumers who must, of course, pay, through their rates, for water used by the city.

Strong arguments have been made in briefs filed on behalf of the city to the effect that because of a condition inserted in an ordinance passed by the town of Hollister September 27, 1875, under which a franchise was given for the operation of this water company, or its predecessor, by which condition it was provided that the city should always have water free for fire protection purposes, this Commission is estopped from fixing a rate to be charged for water furnished the city for fire protection purposes.

The position of this Commission as to its power to fix rates, regardless of contracts heretofore made by which rates were fixed for a public utility service, is now well established and I can see no distinction in this respect between contracts made between a utility and individuals and between a city and a utility.

All of the reasoning which applies to the right of the Commission to fix rates, regardless of contracts between utilities and individuals, applies with equal force to such a contract between a municipality and a utility. I assume it would not now be seriously contended that a city could, through the grant of a franchise or by any form of contract in which a utility service was agreed to be delivered by a public utility company to the city, exclude the Commission from jurisdiction over the rates for such service, and if this is true now, it was true in 1875. When this contract was made the power at that time to fix rates was latent in the State but nevertheless existed, and any contract made must have been made subject to the power of the State to fix rates when it saw fit to exercise this power.

The amount of water delivered by this company to the city for fire protection purposes varies, and, therefore, it is difficult to fix an exact compensation which should be paid by the city to the company, not only for the water which is actually used for the extinguishment of fires but for the cost to the company of being at all times ready to supply water for this purpose when needed.

Considering all the evidence in this case, however, I believe that $100.00 per month is a reasonable sum to be paid by the city to the company for the service furnished for fire protection purposes.

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I submit herewith the following form of order:

ORDER.

Complaint having been made by the town of Hollister against Hollister Water Company, and the Railroad Commission having ordered an investigation into the rates of Hollister Water Company, and Hollister Water Company having made application to this Commission for an increase in rates to be charged its consumers for water, and all of said matters having been consolidated and a public hearing having been held thereon,

It is hereby found as a fact by the Railroad Commission of the State of California that the rates now being charged by Hollister Water Company for water delivered to its consumers are unjust and unreasonable, and that the rates hereinafter set out in this order as the rates to be charged by said Hollister Water Company for water delivered to its consumers are just and reasonable rates, and basing its order upon these findings of fact and the further findings of fact contained in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that Hollister Water Company establish and charge the following rates for water:

$1.25 per month for 400 cubic feet or less.
.30 per 100 cubic feet used between 400 and 1,000 cubic feet.
.20 per 100 cubic feet used between 1,000 and 10,000 cubic feet.
.15 per 100 cubic feet used per month in excess of 10,000 cubic feet.
To be paid by town of Hollister for fire service $100 per month.

It is hereby further ordered that these rates shall be charged and take effect from July 1, 1915.

Hollister Water Company is hereby ordered to file with this Commission, within twenty days from the date of this order, a schedule of rates as herein set out.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1915.

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DECISION No. 2503.

IN THE MATTER OF THE APPLICATION OF OCEANSIDE ELECTRIC AND GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF PROMISSORY NOTES OF THE FACE VALUE OF TWELVE THOUSAND FOUR HUNDRED FORTY-TWO DOLLARS.

Application No. 1521.

Decided June 21, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Good cause appearing,

It is hereby ordered that the notes which applicant was authorized to issue by this Commission's order of February 24, 1915, and supplemental order of March 8, 1915, in the above entitled proceeding may be made payable on demand instead of being payable for a term not in excess of one year.

In all other respects said order of February 24, 1915, and said supplemental order of March 8, 1915, shall remain in full force and effect.

Dated at San Francisco, California, this 21st day of June, 1915.

DECISION No. 2504.

HUNTINGTON LAND AND IMPROVEMENT COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 444.

Decided June 21, 1915.

Complainant petitions the Commission to compel defendant to refund the difference collected on a certain shipment of shrubs from Santa Barbara to Los Angeles, defendant collecting $146.74 on such shipment through a misunderstanding while it should have taken a rate of $42.00.

Held, Complainant awarded $103.74 reparation.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This case is submitted by written stipulation of the parties upon petition and answer. The following are the facts:

Complainant shipped on June 20, 1912, from Santa Barbara to Los Angeles, car CRI&P No. 55732, loaded with plants, or shrubs, weighing

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15,950 pounds. The consignment, because of a misunderstanding at point of origin, was not released to a valuation of $5.00 per hundred pounds as required by tariff provisions in Pacific Freight Tariff Bureau Exception Sheet No. 1-B, C. R. C. No. 52, and therefore charges were assessed at the double first class rate of 92 cents per hundred pounds and collection made of $146.74. Had proper release been executed the charges would have been $42.00, based on class "C" of 21 cents per hundred pounds, minimum weight 20,000 pounds.

Complaint filed August 8, 1913, alleged that the charges demanded and collected were grossly unjust and unreasonable and in violation of section 13 of the Public Utilities Act.

The defendant, in its answer, admits the shipment and the collection of charges as stated in complaint, also the establishment at a later date of a different and lower rate for the transportation of shrubs. The rate subsequently established was brought about by the cancellation of the item upon which charges collected were based from the Exception Sheet, thus permitting Western Classification rating to apply. The charge first became effective in Western Classification No. 52 and is now carried in Western Classification No. 53, C.R.C. 112, F. W. Gomph, agent, in items Nos. 9 and 10, page 250, reading as follows:

> "Shrubs, in packages named, C. L., minimum weight 16,000 pounds, subject to Rule 6-B—Class 'A'".

Shipment actually consisted of shrubs, as evidenced by copy of the invoice, and at the rate and classification established subsequent to the transportation, and now in effect, would have taken, when loaded in a forty-foot car, a weight of 17,920 pounds, and the class "A" rate of 24 cents, making charges $43.00.

The Commission has repeatedly held, formally as well as informally, that where it finds the rate exacted to have been unreasonable, it may award reparation of the difference between that rate and the reasonable rate subsequently established. I therefore find as a fact that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found to be reasonable, and that it is therefore entitled to reparation from defendant in the sum of $103.74.

I submit herewith the following form of order:

ORDER.

Huntington Land and Improvement Company having filed its complaint against the Southern Pacific Company praying for reparation on a shipment of shrubs as set forth in the opinion hereto, and the Commission having been fully apprised in the premises,

It is hereby ordered that the Southern Pacific Company pay to the Huntington Land and Improvement Company the sum of $103.74.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1915.

DECISION NO. 2505.

IN THE MATTER OF THE APPLICATION OF THE SANGER TELEPHONE COMPANY, ROSS B. MATKINS, OWNER, FOR AUTHORITY TO SELL ALL ITS RIGHT, TITLE AND INTEREST IN CERTAIN TELEPHONE LINES AND APPURTENANCES THERETO LOCATED IN FRESNO COUNTY, CALIFORNIA, AND OF H. F. KNAPP TO PURCHASE SAME.

Application No. 1677.

Decided June 21, 1915.

Ross B. Matkins authorized to transfer the telephone system known as the Sanger Telephone Company to H. F. Knapp for a consideration of $11,000.00, provided that the latter named party shall agree to retain the services of a competent telephone man to operate such system or until such time as he is in a position to operate same himself so as to give first-class service.

Ross B. Matkins, and *Guy Johnson,* for Sanger Telephone Company.

H. F. Knapp, in propria persona.

Maynard Bailey, for the Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by Ross B. Matkins, sole owner of the Sanger Telephone Company, an unincorporated telephone company operating as a public utility in the town of Sanger and vicinity, for authority to sell and transfer this telephone system for the sum of eleven thousand (11,000) dollars, and of H. F. Knapp to purchase and operate the same.

By a previous order of this Commission, approved October 25, 1913, the present owner purchased this system from the former owners for the sum of ten thousand (10,000) dollars, since which time expenditures aggregating approximately $2,250.00 have been made for betterments.

Since its purchase in 1913, Mr. Matkins states that by reason of other business interests he has found it difficult to give the necessary time and attention to its operation and to secure the capital necessary to properly meet the demands of the business, and for this reason desires to dispose

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of it to Mr. Knapp who is not engaged in any other business and is willing to devote his entire time to the operation of the system. Mr. Knapp states that he has sufficient capital to provide such extensions and improvements as may become necessary, but has not had sufficient experience in telephone work to successfully conduct the business if left at once entirely to his own resources. His attention having been called to the responsibilities involved in the service of public utilities of this character, the Commission has been assured that the present manager of this company, a man of considerable practical experience, will be retained in the active employ of the company or that, in the possible event of his retirement, other competent help will be employed for such time as may be necessary to enable the prospective purchaser to properly conduct the business without such help. If this plan is faithfully followed, it does not appear that the public interest will be made to suffer by reason of Mr. Knapp's present inexperience. On the contrary, with the completion of certain improvements in the system which he has agreed to make at once, the public should be considerably benefited.

As previously stated, this system was purchased during the year 1913 for $10,000.00 and since its purchase approximately $2,250.00 have been expended in improvements. Based upon the valuation claimed at the time of the purchase in 1913, and allowing for the improvements which have been made since its purchase and after deducting depreciated value of the purchased property at 5 per cent per year, depreciated value not having been deducted by the applicant in fixing the present value, and no fund having been provided for depreciation in the meantime, the present value would be approximately $11,280.00, exclusive of material and supplies on hand, of which there is a small amount. The applicant now claims a present value, inclusive of accounts receivable going with the sale to this prospective purchaser and amounting to $392.71, of $11,077.67. According to the applicant's testimony there are now about 274 telephones in service which, under either of these valuations, would represent an investment per telephone of slightly more than $40.00. The Commission's engineers have not inspected this property in detail for appraisal purposes, but unless the plant is in very poor condition this investment per telephone is not excessive, and since the applicant's rates are not in question in this proceeding there appears to be no reasonable objection to the price to be paid for its transfer.

This is not an incorporated company and hence has issued no stock or bonds. Aside from ordinary current operating expenses, its only outstanding indebtedness is a balance due the Pacific Telephone and Telegraph company on a first mortgage amounting to $2,100.00 with accumulated interest, and a second mortgage for $3,000.00 with accumulated interest held by its manager, Guy Johnson. The total amount of

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interest due on these two mortgages amounts to $271.25. Out of the purchase price, $11,000.00, Mr. Knapp proposes to take up these two mortgages by agreement of the holders and to pay the balance of the purchase price in cash to the present owner. It is also the purpose of the purchaser to make certain needed improvements at once, replacing the present magneto switchboard with a common battery board, and replacing portions of the present open aerial wire construction with aerial cable, increasing the capacity of each to provide additional facilities for growth. The present plant has reached the limit of its capacity and these improvements will add to the efficiency and adequacy of the service.

Under these conditions, I recommend that the application be granted and submit the following order:

ORDER.

Application having been made by the Sanger Telephone Company, Ross B. Matkins owner, for authority to sell all its right, title and interest in certain telephone lines and appurtenances thereto located in Fresno County, California, and of H. F. Knapp to purchase the same, and a hearing having been had, and no reasonable objection appearing,

It is hereby ordered that the application herein be and it hereby is granted. Provided that this permission is granted upon condition that the purchaser, H. F. Knapp, shall assume and take up the two mortgages referred to in the foregoing opinion under such terms and conditions as may be acceptable to the mortgagees. And provided further that the price to be paid for the sale of this property, as set forth in the preceding opinion, is not to be taken by this Commission or other duly constituted authority as approval of the valuation of such property for rate making or other purposes. And it is hereby further provided, as a condition to the granting of this application, that the purchaser, H. F. Knapp, shall, upon its acquisition by him, employ such competent and experienced help in the operation and conduct of this telephone system for such time as may be necessary to enable him to properly and efficiently conduct and operate the same without the employment of such help.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1915.

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DECISION No. 2506.

T. CORSETT ET AL.

vs.

SAN JOAQUIN LIGHT AND POWER CORPORATION.

Case No. 809.

Decided June 21, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

All complainants in the proceeding entitled as above having, on June 21, 1915, made written request that the complaint be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 21st day of June, 1915.

Decision No. 2507, grade crossing; not printed. See end of volume.

DECISION No. 2508.

IN THE MATTER OF THE APPLICATION OF THE VALLEY PIPE LINE COMPANY FOR AUTHORITY TO ISSUE STOCK.

Application No. 1246.

Decided June 22, 1915.

Applicant having filed detailed estimates of cost of portions of its pipe line being constructed from a point near Coalinga to Martinez, is authorized to issue 53,184 shares of its capital stock, being a portion of an authorization heretofore granted for the purpose of constructing such pipe line, stock to be sold at not less than 80, proceeds to be used as per estimates submitted.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIFTH SUPPLEMENTAL ORDER.

On September 19, 1914, in Decision No. 1805 in the above entitled matter, this Commission authorized the applicant herein to issue 53,184 shares of capital stock of the par value of $100.00 per share, and to use the proceeds from the sale thereof in the construction of a pipe line from the property of the California Oil Fields, Limited, near

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Coalinga, in Fresno County, to Martinez, on San Francisco Bay, in Contra Costa County, a distance of approximately 175 miles.

In Decision No. 1805, *supra*, the Commission provided that said stock should not be issued until applicant filed detailed estimates of cost and received supplemental orders from this Commission for such issue. Upon compliance by applicant with these conditions the following supplemental orders have been issued by this Commission:

Supplemental Order No. 1, September 19, 1914, authorizing the issue of 650 shares of said stock,

Supplemental Order No. 2, November 5, 1914, authorizing the issue of 2,811¼ shares of said stock,

Supplemental Order No. 3, December 22, 1914, authorizing the issue of 3,750 shares of said stock, and

Supplemental Order No. 4, February 8, 1915, authorizing the issue of 3,750 shares of said stock.

Applicant now presents estimates and statements of cost, as required by the Commission, justifying the issue of 18,975 shares of its capital stock, and

It is hereby ordered that the Valley Pipe Line Company be granted authority and it is hereby granted authority to issue 18,975 shares of its capital stock of the par value of $100.00 per share, said stock being a part of the 53,184 shares of capital stock of this applicant heretofore authorized to be issued under certain conditions, as specified in this Commission's Decision No. 1805.

The authority herein is granted upon the following conditions, and not otherwise:

1. Stock herein authorized to be issued shall be issued to Anglo-Saxon Petroleum Company at a price that shall yield the applicant not less than $80.00 per share.

2. The proceeds from the sale of the stock herein authorized to be issued shall be applied upon the cost of construction of that certain pipe line which the applicant has under consideration between the property of the California Oil Fields, Limited, near Coalinga, in Fresno County, and Martinez, on San Francisco Bay, in Contra Costa County, California, in accordance with the plans and specifications filed with this Commission in connection with the application herein, to which reference is hereby made.

3. The Valley Pipe Line Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the applicant shall make verified report to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys,

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all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

The foregoing fifth supplemental order is hereby approved and ordered filed as the fifth supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of June, 1915.

DECISION No. 2509.

IN THE MATTER OF THE APPLICATION OF F. W. GOMPH, AGENT FOR THE PACIFIC FREIGHT TARIFF BUREAU, FOR AN ORDER GRANTING PERMISSION TO PUBLISH, IN CURRENT BUREAU EXCEPTION SHEET, A RULE READING AS FOLLOWS: "RULE NO. ____, BRICK LOADED ON FLAT CARS. BRICK CARLOADS, WHEN LOADED ON FLAT CARS WILL BE ACCEPTED ONLY WHEN LOADED IN PYRAMID FORM AND PROTECTED BY END BOARDS FURNISHED BY SHIPPER. AN ALLOWANCE OF NOT TO EXCEED 500 POUNDS WILL BE MADE FOR DUNNAGE." (EXCEPTION TO RULE 10.)

Application No. 1191.

Decided June 22, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant in the above entitled application having, on June 18, 1915, made written request to this Commission that the above entitled application be dismissed,

It is hereby ordered that the above entitled application be and the same is hereby dismissed.

Dated at San Francisco, California, this 22d day of June, 1915.

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DECISION NO. 2510.

IN THE MATTER OF THE APPLICATION OF CITY OF MANHATTAN BEACH, CALIFORNIA, FOR AUTHORITY TO CONSTRUCT ELEVEN CROSSINGS AT GRADE OVER THE TRACK OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN MANHATTAN BEACH.

Application No. 1621.

Decided June 22, 1915.

Applicant, a newly incorporated town, applies for permission to construct a number of crossings over, under and at grade across the tracks of the Santa Fe Railway Company, and it appearing that crossings are necessary to the development of this community, and there being practically no danger in the crossings where grades are separated, construction of same permitted, with the exception of First street which it appears applicant does not desire to construct for some time. Applicant also authorized to construct Pacific avenue and Center street across the tracks of Santa Fe Railway Company at grade, provided Pacific avenue shall be abandoned and closed when the Marine avenue crossing is available, applicant to bear all expense of such crossings, including an automatic flagman at Center street.

Frank L. Perry, for Applicant.

M. W. Reed, for The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

Although this application asks for eleven crossings at grade it was corrected at the hearing to ask for some at grade, some under the track, and some over the track, and one crossing applied for (San Pedro street) was withdrawn. As the application was considered, permission was asked to construct El Camino Real, Pacific avenue, Center street and Fifth street at grade; Rosecrans avenue, Second street and Longfellow avenue under the track; and Oak avenue, Marine avenue and First street over the track.

Manhattan Beach is a newly incorporated city. It is approximately two and one-half miles square and much of the property within its boundaries has been subdivided and laid out in lots. The track to be crossed is a branch line of The Atchison, Topeka and Santa Fe Railway running from Los Angeles to Redondo Beach. It enters Manhattan from the north about midway between the east and west boundary lines of that city and follows a general southwest direction to a point about in the center of the city north and south, then swings south and runs approximately parallel to the ocean and about a quarter of a mile therefrom until it leaves the city at the southern boundary. It effectually

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divides the city into two parts and on account of the fact that the country is rough and the track generally located on high fills or deep cuts, makes the problem of crossings a real one while at the same time lends itself readily to grade separations.

At present there are four crossings in use over the track although none of them have been dedicated to the public and they are open merely on sufferance of the Santa Fe. The service over the track to be crossed is light, consisting of two trains each way per day; the principal train service to and from Los Angeles being on the Pacific Electric along the beach.

The circuitous route taken by the Santa Fe through the city makes it, of course, necessary to have more crossings than would be the case if the track ran directly between the points where it enters and leaves the city, for the reason that both north and south and east and west crossings are required. The fact that the present crossings are not dedicated to the city and may not be permanent makes it imperative that the crossing question should be solved both to conveniently serve those who now live in Manhattan Beach and to enable those who contemplate purchasing lots and erecting homes to know definitely what they may expect in the way of crossings, and the routes consequent upon them, to enable them to get to and from suburban cars on the Pacific Electric tracks and the business district of the city, which are in the eastern part of the city along the beach. Where crossings are affected in a manner other than at grade, *i. e.*, by going over or beneath the track in such a case as this, the Commission is not particularly interested in them, its principal duty in crossing matters being to safeguard, as much as may be, the crossings which it grants, and when proper clearances are observed in building overhead or undergrade crossings, its interest in them practically ceases. In this case the city proposes to assume all expense of the crossings proposed and it is probable that the Santa Fe is not particularly interested in those crossings not at grade. Under these circumstances it is not necessary to discuss to any great length the public necessity and convenience of those crossings applied for which are to be made in a manner other than at grade. With the exception of First street I am of the opinion that all of the over or undergrade crossings requested should be granted to the city. Longfellow avenue is the most southerly street in the city; Rosecrans the most northerly and with the exception of the territory immediately north and south of Center street the rest of these proposed under and overgrade crossings are at comparatively equal distances apart between these streets. At First street the crossing proposed is over the track and to follow the plan suggested much of First street, now improved, will have to be torn up. First street is between and close to the proposed crossings at Longfellow avenue and Second street, and it will be

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the most expensive crossing to construct of any of those for which application is made. From the testimony I am convinced that this crossing will not be built for a long time in the future, and I am unwilling to recommend an order where it is clear that it will be inoperative for a long period after it is issued. If the city should, in the near future, wish to construct an overhead crossing at this point and secures an easement from the Santa Fe, a further application may be made for it and an ex parte order may be entered by the Commission.

To consider now the grade crossings. The most northerly of those applied for, namely, El Camino Real, is on a north and south road and is a crossing now in use. The proposed overhead crossing at Oak avenue will be about 250 feet south of this grade crossing and the proposed undergrade crossing at Rosecrans will be less than 1,200 feet to the north. I believe that these two grade separations will amply care for traffic with but very little inconvenience to the public, and that the danger which would be incurred by this crossing remaining open would more than offset this inconvenience.

The Pacific avenue crossing is now open and in use. It is about 300 feet away from the proposed overhead crossing at Marine avenue and can very well be eliminated when that overhead crossing is completed. Counsel for applicant stated that proceedings were now under way for the construction of the overhead at Marine avenue but that it might be some time before they could be carried to a conclusion. In the meanwhile it is clear that Pacific avenue must remain open, and I will recommend that this crossing be granted to the city for a period of eighteen months unless Marine avenue should be opened before that time. If, at the expiration of the eighteen months, Marine avenue is not yet opened the Commission can, if it thinks proper, extend this time.

Center street is the main east and west thoroughfare from Manhattan Beach to the county road system leading to and from Los Angeles. The crossing over the track is in use and has been in use for a number of years, and the street was improved by the county before the city was incorporated. There is very little chance for a grade separation at this point. The nearest crossing proposed to the north is the overhead at Marine about three-quarters of a mile away. To the south the nearest crossing contemplated to be granted in this application is the undergrade crossing at Second street about one-half mile to the south. I am satisfied that this crossing should remain open and be granted as applied for, and since the testimony was unanimous to the effect that the view of trains from the north is badly obstructed, I will recommend that it be protected by an automatic flagman.

The last and most southerly of the grade crossings applied for is at Fifth street. No need was shown for this crossing at this time. The street is open only from the track to the west. To the east the land has

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not yet been subdivided and to carry this street across the track would serve no public convenience. It appears that there is a possibility of securing grade separations one block north and one block south from this street and I am satisfied that the application in so far as it pertains to the crossing of this street should not be granted at this time.

With the construction of the crossings granted in this application and the installation of a protective device at Center street, I believe Manhattan Beach will find itself well provided with crossings for present needs and will certainly have crossings which are safe for travel. I am confident that with the growth of the city, the topography of the country and the progressive policy of the city officials in avoiding grade crossings wherever possible will make it probable that such crossings as are needed in the future will be other than grade crossings.

I recommend the following form of order:

ORDER.

City of Manhattan Beach, having filed its application with the Commission for permission to construct eleven (11) crossings at grade across the track of The Atchison, Topeka and Santa Fe Railway Company, and a public hearing having been held at which all interested parties were represented, and this application having been modified as shown, and it appearing that the application should be granted in so far as it pertains to some of these crossings and as to others it should not be granted, for reasons set forth in the foregoing opinion,

It is hereby ordered that permission be hereby granted the City of Manhattan Beach to construct Rosecrans avenue, Second street and Longfellow avenue beneath the track of The Atchison, Topeka and Santa Fe Railway Company, and Oak avenue and Marine avenue above the track of The Atchison, Topeka and Santa Fe Railway Company, subject to the following conditions, viz:

(1) The entire expense of constructing these crossings shall be borne by the City of Manhattan Beach.

(2) These crossings shall be constructed with clearances to conform to the Commission's General Order No. 26.

It is hereby further ordered that permission be hereby granted City of Manhattan Beach to construct Pacific avenue at grade across the track of The Atchison, Topeka and Santa Fe Railway Company for a period of eighteen (18) months, unless Marine avenue be completed before that time. When Marine avenue crossing is completed or at the expiration of eighteen months from date of this order this crossing shall be immediately closed and abandoned as a public highway crossing. The entire expense of constructing this crossing in a good and first-class condition for the safe and convenient use of the public shall be

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borne by applicant. Grades of approach shall not exceed six (6) per cent.

It is hereby further ordered that permission be hereby granted City of Manhattan Beach to construct Center street at grade over the track of The Atchison, Topeka and Santa Fe Railway Company, subject to the following conditions, viz:

(1) The entire expense of constructing this crossing shall be borne by applicant.

(2) The expense of maintaining this crossing thereafter up to within two (2) feet of the rails of The Atchison, Topeka and Santa Fe Railway Company shall be borne by applicant. The expense of maintaining the crossing between the rails and to a point two (2) feet outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(3) For the protection of this crossing The Atchison, Topeka and Santa Fe Railway Company shall install a first-class automatic flagman of a type to be approved by the Commission. The expense of furnishing and installing this flagman shall be borne by applicant and the expense of its maintenance thereafter shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

It is hereby further ordered that the Commission reserves the right to make such further orders regarding this application as to it may appear to be right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of June, 1915.

DECISION No. 2511.

IN THE MATTER OF THE APPLICATION OF DOWNEY LAND AND IMPROVEMENT ASSOCIATION FOR AN ORDER AUTHORIZING THE ESTABLISHMENT OF RATES FOR WATER ON DOWNEY TRACT, DOWNEY, CALIFORNIA.

Application No. 1375.

Decided June 22, 1915.

J. H. Strine, for Applicant.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

The application herein recites that the Downey Land and Improvement Association is primarily in the business of subdividing and selling lands north of the town of Downey and, incidentally, has supplied water to purchasers; that the only charge has been one dollar ($1.00) per month per consumer with no limit as to amount used; and that the income derived is entirely incommensurate with expense to applicant. Applicant prays that the Railroad Commission of the State of California make its order establishing the following rates:

600 cubic feet monthly for $1.00 minimum payment.
All excess 13 cents per 100 cubic feet.

A public hearing was conducted at which the association presented evidence of the cost of construction of its water system and of its maintenance and operation, and also of the present income and of that which may be expected in the future.

No one having made objection and the rate applied for appearing to be justifiable, I recommend the following order:

ORDER.

The Downey Land and Improvement Association, having made application for an order of this Commission establishing a rate for sale of water by measurement and a public hearing having been conducted and the Commission being fully apprised in the premises.

It is hereby ordered that the Downey Land and Improvement Association be and it hereby is authorized to charge the following rates:

600 cubic feet for $1.00 minimum monthly payment.
For excess use at 13 cents per 100 cubic feet.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of June, 1915.

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Decision No. 2512.

IN THE MATTER OF THE APPLICATION OF HERMOSA BEACH WATER CORPORATION FOR PERMISSION TO ISSUE BONDS TO REIMBURSE THE COMPANY'S TREASURY FOR EQUIPMENT AND EXTENSIONS ADDED TO CAPITAL INVESTMENT.

Application No. 1616.

Decided June 22, 1915.

Applicant, contending that it has expended $8,492.95 for capital purposes, applies for permission to issue $8,000.00 face value of its 6 per cent bonds and it appearing that applicant has not as yet secured final title to the property pledged as security for such bonds, application granted, such bonds to be sold at not less than 80, proceeds to be used to reimburse treasury for capital expenditures and in the payment of balances due for equipment, provided, that such bonds may only be issued under a supplemental order after applicant secured final title to its properties and shall have submitted a detailed account of expenditures made from its treasury which it desires to refund.

F. D. Cornell, for Applicant.

Report of the Commission.

Edgerton, *Commissioner.*

This is an application by Hermosa Beach Water Corporation for authority to issue $8,000.00 of its first mortgage 6 per cent ten-year gold bonds on account of expenditures previously made for additions and betterments.

In a decision rendered October 13, 1914, this Commission authorized the applicant to issue $65,000.00 face value of first mortgage bonds and $35,000.00 par value of stock for the purpose of acquiring the property of the Hermosa Beach Water Company, a public utility engaged in the sale and distribution of water for domestic and irrigation purposes in the city of Hermosa Beach, Los Angeles County, and the unincorporated territory adjacent thereto. Hermosa Beach Water Company was acquired by El Sobrante Land Company in October, 1913, in exchange for a large tract of land in Riverside County. This land was subject to a lien in the sum of $52,800.00 held by certain English capitalists. In order to effect the exchange of the property, this lien was transferred to the stock of the Hermosa Beach Water Company. The transfer of the property to Hermosa Beach Water Corporation and the issue of securities as authorized by the Commission was for the purpose of extinguishing this lien, it being the intention of Hermosa Beach Water Corporation to issue its stock and bonds to Hermosa Beach Water Company—the latter company in turn dissolving and distributing its only assets, to wit: said bonds and stock, to El Sobrante Land Company—

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whereupon the bonds, or cash in lieu thereof, were to be delivered by the land company to the English capitalists.

At the same time that Hermosa Beach Water Corporation was authorized to issue the securities above mentioned, it was also authorized to execute a trust deed upon all of its property for the purpose of securing a total issue of $80,000.00 of bonds. The Commission's order provided that the $15,000.00 of bonds remaining after the $65,000.00 of bonds were delivered to the Hermosa Beach Water Company should be held in reserve for additions and betterments. In the present application, Hermosa Beach Water Corporation represents that additions have been made to capital account during 1914 in the sum of $8,492.95, as more fully set forth in Exhibit "B" attached to the original application. Against these expenditures, the Commission is asked to authorize the issue of $8,000.00 of bonds at not less than 80 per cent of their face value. Applicant desires to use the bonds, or the proceeds thereof, toward the payment, or in securing the payment, of the following items:

Reimbursement of treasury on account of expenditures made for additions and betterments	$6,229 44
Balance due Krogh Manufacturing Company for pumping equipment	955 00
Balance due H. R. Boynton Company for pipe line materials	950 00
Balance due Neptune Meter Company for meters purchased	3,109 65
Total	$11,244 09

An examination of the records of Hermosa Beach Water Company discloses the fact that the transfer of property to Hermosa Beach Water Corporation has not been completed. Representatives of applicant state that the stock and bonds previously authorized by the Commission have been issued as of February 1, 1915, and also that a conveyance has been executed and recorded. It appears, however, that all of the documents—trust deed, bonds, conveyance, etc.—are held in escrow by the Title Insurance and Trust Company of Los Angeles. It was also disclosed that the general books of the water business are still being conducted as those of the Hermosa Beach Water Company, and no record of a transfer of the property for a consideration of stock and bonds appears thereon. These books show the company's balance sheet as of December 31, 1914, as follows:

Assets.

Tangible capital	$8,000 00	
Landed capital	24,100 00	
Water supply	26,453 88	
Distribution "Hermosa"	26,049 73	
Distribution "Manhattan"	14,864 60	
Distribution "Unincorporated"	15,435 91	
General capital	2,469 85	
Construction work	7,105 28	
		$124,479 25

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Current assets.			
Cash and deposits	$2,109 28		
Notes receivable	1,219 57		
Accounts receivable	2,263 81		
Petty cash	2 49		
		$5,595 15	
Material and supplies	$483 88		
Clearing account	406 81		
		890 69	$130,965 09
Liabilities.			
Capital stock		$100,000 00	
Current liabilities:			
Notes payable	$9,553 34		
Accounts payable	4,097 91		
Consumers' deposits	1,391 34		
		15,042 59	
Surplus		15,922 50	
			$130,965 09

It appears that dividends in the sum of $4,200.00 have been declared by the company. These dividends have been at the rate of $300.00 per month from November, 1913, to December, 1914, inclusive, and it appears that they have been used to pay interest upon the mortgage against which the stockholders have pledged their stock.

While the items against which applicant proposes to issue bonds appear to be items chargeable to capital account, it does not appear that this Commission should issue a final order authorizing an issue of bonds until the transfer of the property securing the bonds has been perfected. A final order in this matter must also be made dependent upon a more complete showing by Hermosa Beach Water Corporation as to the manner in which it arrives at the surplus from which the sum of $6,229.44 is reported to have been expended for additions and betterments.

I accordingly recommend the following form of order:

ORDER.

Hermosa Beach Water Corporation, having applied to this Commission for authority to issue bonds in the sum of $8,000.00 for the purposes set forth in the opinion which precedes this order, and a hearing having been held, and it appearing that the purposes for which applicant proposes to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income, and that applicant's request is reasonable and should be granted,

It is hereby ordered that Hermosa Beach Water Corporation be, and it is hereby, granted authority to issue $8,000.00 of its first mortgage 6 per cent ten-year gold bonds upon the following conditions, and not otherwise:

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1. None of the bonds herein authorized for the purpose of reimbursing applicant's treasury in the sum of $6,229.44 shall be issued until applicant shall have submitted to this Commission a full and complete statement showing that such sums have actually been expended out of the surplus of Hermosa Beach Water Corporation, nor shall any of the bonds herein authorized be issued until the transfer of the properties of Hermosa Beach Water Company to Hermosa Beach Water Corporation shall have been completed and until a supplemental order shall have been issued by this Commission approving the above mentioned statement and transfer of property.

2. The bonds herein authorized to be issued shall be sold so as to net applicant not less than 80 per cent of their face value.

3. Applicant shall only use the bonds herein authorized, or the proceeds thereof, toward the payment of the following items:

Reimbursement of treasury on account of expenditures made for additions and betterments	$6,229 44
Balance due Krogh Manufacturing Company for pumping equipment	955 00
Balance due H. R. Boynton Company for pipe line material	950 00
Balance due Neptune Meter Company for meters purchased	3,109 65
Total	$11,244 09

4. In lieu of the authority herein granted applicant to use the bonds or their proceeds toward the payment of the items set forth in paragraph 3 above, applicant may pledge said bonds as collateral security for the payment of any of the accounts set forth in said paragraph 3, provided that the ratio between any of the accounts so secured and the bonds so pledged shall at no time be less than 66⅔ per cent of the face value of the pledged bonds.

5. Applicant shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds from the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the terms and conditions of the sale of said bonds, the moneys realized therefrom and the use and application of such moneys.

6. The authority herein granted shall apply only to bonds issued by said company on or before the first day of July, 1916.

7. This order shall not become effective until the fee prescribed in section 57 of the Public Utilities Act as amended shall have been paid.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of June, 1915.

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DECISION No. 2513.

IN THE MATTER OF THE APPLICATION OF GLENDALE AND MONTROSE RAILWAY FOR AN ORDER AUTHORIZING THE ISSUANCE OF ADDITIONAL STOCK.

Application No. 1518.

Decided June 22, 1915.

Glendale and Montrose Railway Company applies for permission to issue such an amount of stock as this Commission might determine reasonable, such stock to be issued to J. Frank Walters, who owns all of applicant's outstanding stock at present and has also advanced a considerable sum in cash, which has been used in the construction of its line of railway, in consideration of which the stock now applied for is proposed to be issued and after a review of applicant's financial affairs, it is authorized to issue 400 shares of the par value of $100.00 per share, to be issued to Walters for cash advanced.

William T. Blakely, for Applicant.

S. F. Macfarlane, for Western Empire Suburban Farms Association.

Trustin P. Dyer, for town of La Crescenta.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Glendale and Montrose Railway, formerly Glendale and Eagle Rock Railway Company, for an order authorizing the issue of stock in an amount to be determined by the Commission.

Applicant operates an electric interurban railway from the city of Glendale, through Montrose to La Crescenta, with a branch running from Glendale to Eagle Rock, a total distance of 8.29 miles—all in Los Angeles County.

The line from Glendale to La Crescenta is standard gauge. The branch from Glendale to Eagle Rock, a distance of 2.08 miles, is narrow gauge.

Applicant has an authorized stock issue of $25,000.00, consisting of 250 shares of stock of the par value of $100.00 per share, all of which is outstanding. All of the capital stock, with the exception of two shares necessary to qualify directors, is owned by Mr. J. Frank Walters, president of the company. The company also has outstanding $25,000.00 of 6 per cent first mortgage bonds due September, 1929, and miscellaneous accounts payable in the sum of $11,684.96. In addition to the above indebtedness J. Frank Walters and Florence E. Walters have advanced to date of March 31, 1915, out of personal funds the sum of $89,221.57.

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By the terms of a decision rendered April 11, 1914, in Application No. 1046, and subsequent orders, applicant was granted authority for a new first mortgage bond issue of $150,000.00, of which $115,000.00 was to be issued for the purpose of taking up the present outstanding bonds and to pay for certain extensions, equipment, etc. The company now reports that it has been unable to sell any of these bonds and in the meantime the Commission's order permitting such issue has expired.

The company's balance sheet as of March 31, 1915, is as follows:

Assets.

Property account—		
Rights of way	$590 00	
Eagle Rock track	17,164 80	
Eagle Rock overhead	2,705 80	
Verdugo Park track	20,268 73	
Verdugo Park overhead	2,536 73	
La Crescenta track	17,504 57	
La Crescenta overhead	2,844 98	
La Canada extension	72 00	
Monte Vista extension	343 65	
Equipment	7,729 62	
Power station	10,418 64	
Furniture and fixtures	317 90	
Extensions and reconstruction	62,613 35	
Interest during construction, etc.	887 07	
		$145,997 84
Cash and accounts receivable		740 59
Discount on capital stock or rights of way		10,000 00
		$156,738 43

Liabilities.

Capital stock		$25,000 00	
Bonds		25,000 00	
Accounts payable—			
Miscellaneous creditors	$11,684 96		
J. Frank Walters	79,121 57		
Florence E. Walters	10,100 00		
		100,906 53	
Donated capital—bonus for extensions		33,266 06	
Profit and loss (deficit)		27,434 16	
			$156,738 43

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The company's earnings for various periods are shown in the following statements:

Glendale and Montrose Railroad Company—Profit and Loss Accounts at Various Dates.

	To March 31, 1912	Year to March 31, 1913	Two months to June 1, 1913	Thirteen months to June 30, 1914	Nine months to March 31, 1915
Revenue—					
Passenger fares	$10,619 05	$10,768 20	$2,665 90	$19,172 30	$13,794 32
Other revenue	696 95	127 03		68 60	
Total revenue	$11,316 00	$10,895 23	$2,665 90	$19,239 90	$13,794 32
Expense—					
Transportation	$4,957 14	$4,769 00	$1,723 08	$10,007 93	$6,957 45
Maintenance of way	5,406 15	1,595 17	5 69	747 19	289 85
Car expense	1,377 33	1,286 25	226 00	93 55	784 36
Power	4,525 53	4,522 95	1,192 46	8,071 01	9,158 88
Lighting	101 38				
Traffic expense				114 36	258 85
Taxes		590 34		645 67	782 50
General	690 04	1,222 08	636 65	4,527 81	3,904 32
Total expense	$17,057 57	$13,985 79	$3,783 88	$24,207 52	$22,136 21
Operating loss	$5,741 57	$3,090 56	$1,117 98	$4,967 62	$8,341 89
Interest, miscellaneous	17 50	165 13	77 33	77 33	645 71
Interest on bonds, 2 years					3,000 00
Bond expense					346 20
Deficit	$5,759 07	$3,255 69	$1,195 31	$4,890 29	$12,333 80
Deficit to June 1, 1913			$10,210 07		
Deficit to June 20, 1914				$15,100 36	
Deficit to March 31, 1915					$27,434 16

From the above statements it will be noted that the property has been continuously operated at a loss. It appears, however, that Mr. Walters is also largely interested in real estate tracts developed by the railway and the value of these tracts has been enhanced substantially by the construction and service of the railway.

At the hearing of this application a tentative valuation of applicant's property was submitted by the Commission's engineers. With revisions made subsequent to the hearing the figures are as follows:

	Reproduction value	Present value
Operative	$237,355 54	$222,413 63
Non-operative	1,625 11	1,592 98
Totals	$238,980 65	$224,006 61

These figures, however, include an allowance of approximately $25,250.00 for right of way multiples. Without finally accepting the

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valuation figures submitted by the Commission's engineers, I am of the opinion that they may be used for the purposes of this proceeding, provided the allowance for right of way multiples is subtracted therefrom. This will reduce the present value of the property to $198,756.61. On this basis, and keeping in mind applicant's indebtedness of $125,906.53, I am of the opinion that applicant may at this time be authorized to issue to J. Frank Walters 400 shares of stock of the par value of $100.00 per share in addition to the 250 shares which he now holds. This will bring applicant's total outstanding stock issue up to the sum of $65,000.00. I am persuaded to this view by an analysis of the company's accounts, which shows that applicant has invested in plant the sum of approximately $33,000.00 for which it has not been reimbursed in the form of an issue of either stock or bonds. Mr. Walters has asked for this stock issue upon the grounds that he desires to possess a just proportion of the entire capital stock of the company at any time when further stock may be sold under the orders of this Commission to provide for additions and betterments.

The application does not contemplate the sale of the stock herein requested to the general public, but it is the express intention that this stock shall be issued to Mr. Walters.

Any proposal for the authorization of this stock for sale to the general public would necessitate a closer scrutiny into the operating conditions of this corporation and an analysis of the causes of the present operating deficit. It would be necessary, furthermore, to make more extensive investigations to determine the possibility of operating this road at a profit, so that more revenue might be derived.

At the present time this road is owned entirely by Mr. Walters and holds for him a peculiar interest by reason of his investment in real estate holdings which it serves. The stock, therefore, might not hold a similar appeal for some other investor.

Applicant states in its application that it proposes to amend its articles of incorporation to provide for an increase in its authorized capital stock from $25,000.00 to $250,000.00. The issue of the stock herein applied for must, of course, be made dependent upon such action.

I submit the following form of order:

ORDER.

Glendale and Montrose Railway, having applied to this Commission for authority to issue stock as hereinbefore set forth, and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which said stock is to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

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It is hereby ordered that Glendale and Montrose Railway be, and it is hereby, authorized to issue 400 shares of stock of the par value of $100.00 per share to J. Frank Walters, for the purpose of reimbursing said Walters for capital expenditures made from moneys in the treasury of the applicant not secured from the issue of stocks, bonds, notes or other evidences of indebtedness.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Before applicant shall issue the stock herein authorized, it shall make such changes in its articles of incorporation as are necessary to provide for such issue.

2. The authority herein granted Glendale and Montrose Railway to issue stock shall apply only to such stock as shall have been issued on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1915.

DECISION NO. 2514.

SOUTHERN CALIFORNIA SUGAR COMPANY

vs.

SOUTHERN PACIFIC COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 633.

Decided June 22, 1915.

T. C. Burke, for Complainant.

Geo. D. Squires, for Southern Pacific Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

ORDER OF DISMISSAL.

Complainant is engaged in the manufacture of sugar from sugar beets. By complaint filed July 3, 1914, it alleges that the rates on sugar beets from Vegala, Las Flores, Ysidora, Ranch House and De Luz to the complainant's factory are unjust and unreasonable. Reparation is asked.

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A hearing was held in the city of Los Angeles on February 5, 1915. It then developed that complainant's plant is located about seven-tenths of a mile from New Delhi, also that shipments of sugar beets from points of origin to ultimate destination must pass over the rails of three carriers: From points of shipment to Santa Ana over The Atchison, Topeka and Santa Fe Railway Company; Santa Ana to New Delhi over the Southern Pacific Company thence to destination via the Pacific Electric Railway.

During the hearing complainant endeavored to prove discrimination by bringing in the Pacific Electric Railway's rates on sugar beets from points on that line to Dyer, and asked permission to amend the complaint accordingly. The Commission acceded to its request and set the matter over for further hearing at Los Angeles on June 11, 1915. At the commencement of the adjourned hearing counsel for complainant asked for and was given further time to familiarize himself with the matters in issue and intimated that the controversy might be amicably adjusted. The Commission thereupon set the case over to June 25, 1915.

The Commission is now in receipt of a communication from complainant dated Santa Ana, June 18, 1915, asking that the case be dismissed as the matters involved have been adjusted.

I submit herewith the following form of order:

ORDER.

It is hereby ordered that the above entitled case be and the same is hereby dismissed without prejudice.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of June, 1915.

DECISION NO. 2515.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING AN ISSUE OF BONDS.

Application No. 1599.

Decided June 25, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

SECOND SUPPLEMENTAL ORDER.

Whereas, this Commission, by Decision No. 2467, dated June 14, 1915, approved a trust agreement (a copy of which is filed with the original

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application herein and marked Exhibit "A") dated July 1, 1915, between Pacific Light and Power Corporation and Mortimer N. Buckner, trustee, securing $2,338,000.00 6 per cent two-year gold notes; and

Whereas, on June 23, 1915, applicant filed an amended copy marked "Exhibit A Amended." of trust agreement heretofore approved; and

Whereas, the amended copy marked "Exhibit A Amended" filed June 23, 1915, is a copy of the trust agreement as finally executed; and

Whereas, the amended copy marked "Exhibit A Amended" of the said trust agreement, differs from the original in minor details only; and

Whereas, applicant desires the amended trust agreement marked "Exhibit A Amended" to supersede the trust agreement marked "Exhibit A,"

It is hereby ordered that the trust agreement submitted by Pacific Light and Power Corporation in connection with the application herein and marked "Exhibit A Amended" be and it is hereby approved.

It is hereby further ordered that the trust agreement submitted by Pacific Light and Power Corporation in connection with the application herein and marked "Exhibit A Amended" supersede the trust agreement marked "Exhibit A" and approved by this Commission by Decision No. 2467, dated June 14, 1915.

The foregoing second supplemental order is hereby approved and ordered filed as the second supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

DECISION NO. 2516.

IN THE MATTER OF THE APPLICATION OF HILBORN BROTHERS FOR AN ORDER FIXING WAREHOUSE RATES.

Application No. 1684.

Decided June 25, 1915.

Applicant, operating several warehouses under a schedule for the storage of grain of 50 cents per ton for six months or less and 75 cents per ton for season with an additional charge of 10 cents weighing and 15 cents wharfage charge, shows that such rates are unremunerative and is authorized to put into effect a rate of $1.00 per ton on grain to include all services as given at present with no additional charges, such rate to become effective June 1, 1915.

Arthur Hilborn, for Applicant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by Hilborn Brothers, a co-partnership, owning and operating certain warehouses located on Suisun Slough, in the town of Suisun, and has to do with rates charged by that firm for storing grain. In addition to this commodity, which is the principal item stored by applicant, hay and various other farm products are accepted for storage, as is also a small quantity of merchandise and a few odds and ends as offered. Applicant has filed warehouse rates with the Commission as follows:

Grain.

Storage, after 30 days to include 6 months	50 cents per ton.
Storage, after 6 months, to include season	75 cents per ton.
Weighing	10 cents per ton.
Wharfage	15 cents per ton.

Hay.

Storage, per season	$1.00 per ton.
Weighing	.10 per ton.
Wharfage	.15 per ton.

Wool.

Storage, in lots of 1 to 5 bags	25 cents per bag.
Storage, in lots of 6 or more bags	15 cents per bag.

Potatoes and Onions.

Storage, when receipt is issued	5 cents per sack.
Wharfage, for boat loads	25 cents per ton.

Furniture.

Storage, dray loads	$1.50 per month.
Trunks, etc.	.50 per month.

Under the rates applicable to farm products, the storage season runs from June 1st to May 31st of the following year. The rate desired by applicant is a flat charge of $1.00 per ton per season to apply on both grain and hay, but since this rate, in so far as it applies to hay, is the exact charge already on file with the Commission, no consideration will be given to rates other than those collected for grain storage. All other rates should be continued in effect as lawfully filed with the Railroad Commission.

Applicant has at present three warehouses devoted to public storage: One built of stone and corrugated iron and used for grain, and two wood and corrugated iron structures in which hay alone is stored. Each of these warehouses is located on an arm of Suisun Bay and is almost wholly dependent upon water transportation for access to the markets. Wood platforms resting on wooden piles and extending out over the slough to deep water serve as ample wharf room and safe moorings for the class of vessels calling at this point. The thick stone

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walls and iron roof and doors of the grain warehouse render it practically fireproof. To this building has been joined two smaller structures also used for storage, in one of which applicant conducts a small retail mercantile business. The capacity of these warehouses is shown in the following dimensions:

Grain warehouse (stone)	50 x 120 x 12 feet.
Grain warehouse, side addition	20 x 120 x 10 feet.
Grain warehouse, end addition	36 x 40 x 12 feet.
Hay warehouse No. 1	40 x 50 x 16 feet.
Hay warehouse No. 2	250 x 108 x 20 feet.

One wagon scale accessible to each warehouse, one portable platform scale, four modern hand trucks and other trucks in the grain warehouse and the usual block and tackles for the hay warehouses constitute the facilities at present in use. The stone warehouse is also electrically lighted.

A statement accompanying this application shows that for the year 1914 there was an apparent surplus of operating revenue over operating expense amounting to $546.80, but when considered in connection with the three years preceding, this amount dwindles to $158.25. This will be seen from the following table:

	Tonnage		Receipts		Expenses		Difference
	Hay	Grain	Wharfage	Warehouse	Taxes, etc.	Labor	
1911	300	1,300	$29 00	$1,505 00	$190 00	$1,230 00	$114 00
1912	470	600	21 00	1,616 00	270 00	804 60	*37 00
1913	500	500	24 00	1,067 00	270 00	810 00	11 00
1914	900	1,200	32 00	1,880 00	290 00	1,077 00	545 00
Total	2,170	3,600	$106 00	$5,168 00	$1,020 00	$3,921 00	$633 00
Average per annum	542½	900	$26 50	$1,367 00	$255 00	$980 25	$158 25

*Loss.

It will be observed from the accompanying table that as between hay and grain the latter constitutes 62 per cent of the total. It has also been shown by applicant that for these years miscellaneous storage amounts to about 5 per cent of the whole.

As a strong argument tending to justify applicant's petition, figures have been presented to show that the cost of operation of this utility, in so far as the storage of grain is concerned, has increased 13 per cent since 1911. This expense for labor, taxes, etc., for the years indicated, is as follows:

1911	65 cents per ton.
1912	68 cents per ton.
1913	72 cents per ton.
1914	78 cents per ton.

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Assuming a fair degree of accuracy for these figures for the year 1911, warehouseman realized 10 cents per ton on grain stored, while for the year 1914 alone it cost 3 cents per ton more than could possibly accrue under the present rates for grain storage.

In applicant's annual report to the Commission there has been placed a value of $12,550.00 on the property said to be used for warehouse purposes. This value was segregated in the following manner:

Land	$5,000 00
Buildings	6,500 00
Scales	1,050 00
Total	$12,550 00

Applicant's showing with regard to operating revenue and expense and the further fact that a rate based upon the valuation would, from the growers' standpoint, in all probability be prohibitory, makes it inadvisable to consider, for rate basing purposes, the value placed upon this property. The rate which will be recommended herein will, therefore, be referable to the general conditions and to operating returns as shown by the testimony at the hearing. I desire, however, to call attention to one fact in connection with the amount of land (said to be several acres), included in applicant's valuations, and to state that where it becomes necessary to base rates strictly upon public utility valuations, only that amount of land or other property actually used and useful for public utility purposes will be by the Commission permitted to figure in the values upon which rates may be based.

Each of applicant's patrons had personal notice of the hearing in this application and was advised that it would be his right to be present and be heard if he so desired. Notwithstanding this notice and the general publicity given to the hearing, not a single farmer or grower appeared, nor was there a protest of any nature. Considering that the hearing was held in the very heart of the district from which warehouseman draws patronage, this fact is taken as showing that storers are not unfavorable to the proposed increase in rates. Furthermore, the testimony of one of applicant's witnesses was emphatic to the effect that that firm could not continue to operate without at least sufficient returns to pay a superintendent for a portion of his time; otherwise it would be necessary to take steps to close the warehouse to public storage and endeavor to turn the property into more remunerative channels, to the detriment of growers in that locality. Another significant fact was the presence at this hearing of a representative of the Grain Trade Association of San Francisco, and his expression of entire acquiescence on behalf of that association in the rates proposed by applicant, as tending to a better class of warehouse service.

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As already stated, rates, if authorized as prayed for, will apply to the storage of grain only and will be conditioned upon the understanding that a high class of service will be given, as heretofore, including the necessary re-sacking at warehouseman's expense, and every other duty imposed by law or custom tending to the efficiency of the service and giving the growers of this community access to the best markets.

For the foregoing reasons, and in consideration of the further facts and conditions surrounding the service covered by this application, I am of the opinion and find as a fact that this application, with the modification suggested, should be granted and that $1.00 per ton per season is a fair and reasonable rate for the storage of grain in applicant's warehouse at Suisun. I recommend the following form of order:

ORDER.

Hilborn Brothers, a co-partnership, doing a public utility warehouse business at Suisun, California, having applied to the Railroad Commission for an order authorizing an increase in warehouse rates for the storage of grain in said warehouses, and a public hearing having been held upon said application, and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted, in so far as it conforms to the rates set out herein, and that applicant be permitted to charge and collect the following rate for the storage of grain herein found to be just and reasonable, viz:

Grain.

Storage, per season (June 1st to May 31st following)------ **$1.00 per ton.**

It is further ordered that the collection of this rate be and the same is conditioned upon the performance of all service usually rendered in handling this commodity, such as receiving, weighing, piling, carrying in storage, necessary re-sacking or placing in proper condition for shipment and loading out.

The applicant is hereby authorized to place in effect as of June 1, 1915, a schedule embracing the above rate and conditions, provided that the same shall be promptly filed with this Commission as the law provides.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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DECISION NO. 2517.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE SALE OF CERTAIN PROPERTIES.

Application No. 1645.

Decided June 25, 1915.

Southern California Gas Company authorized to transfer to the Midway Gas Company its natural gas compressor plant near Taft and its gathering lines in the Midway oil fields in Kern County, together with certain contracts with various oil producing companies for natural gas for a consideration of $684,000.00 face value of bonds of the Midway company, such bonds to become a lien subject to the first mortgage of the Southern California Gas Company in place of property transferred.

Jared How, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In this application, Southern California Gas Company asks for authority to sell to Midway Gas Company its natural gas compressor plant located near Taft, Kern County, and its natural gas field gathering lines, located in Kern County. Applicant also asks for authority to assign to Midway Gas Company a contract effective January 1, 1914, between Honolulu Consolidated Oil Company and Southern California Gas Company and Midway Gas Company; also a contract effective January 1, 1914, between Southern Pacific Land Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company and Midway Gas Company.

Applicant reports the cost of the property it desires to sell as follows:

Compressor plant		$438,996 38
Plant	$407,111 27	
Interest to April 1, 1915	31,885 11	
Gathering lines		153,944 17
Lines	$141,844 32	
Interest to April 1, 1915	12,099 85	
Attorney fees to draw up contracts		20,833 57
Automobile		1,000 00
Total		$614,774 12

Exhibits Z-2 and Z-3, filed in connection with Application No. 1644, and Exhibit B, attached to the petition herein, contain a description in general terms of the property to be sold by Southern California Gas Company as well as the cost of such property.

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In payment for the property to be acquired from Southern California Gas Company, Midway Gas Company proposes to issue and deliver its first and refunding fifteen-year 6 per cent gold bonds at 90 per cent of face value, in the amount of $684,000.00.

The properties which applicant proposes to sell and transfer to Midway Gas Company are subject to the lien of the first mortgage of the Southern California Gas Company.

Before any order in this proceeding can become effective it is of course apparent that applicant should secure the release of these properties from the lien to which they are now subject. Such release contemplates that the first and refunding mortgage bonds of the Midway Gas Company delivered to Southern California Gas Company in payment for such properties shall be subject to the lien of the first mortgage of Southern California Gas Company.

Reference is hereby made to the decision in Application No. 1644, Midway Gas Company, this day rendered, for a general description of the properties to be transferred to Midway Gas Company and the reasons for such transfer.

I submit the following form of order:

ORDER.

Southern California Gas Company having applied to the Railroad Commission for authority to sell and assign to Midway Gas Company its natural gas compressor plant located near Taft, Kern County; its natural gas field gathering lines located in the Midway oil fields, Kern County; a contract effective January 1, 1914, between Honolulu Consolidated Oil Company, Southern California Gas Company, and Midway Gas Company, a copy of which was filed in connection with Application No. 1644 and marked Exhibit No. 1, to which reference is hereby made; and a contract effective January 1, 1914, between Southern Pacific Land Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company and Midway Gas Company, a copy of which was filed in connection with Application No. 1644 and marked Exhibit No. 2, to which reference is hereby made; and one automobile—all for and in consideration of the delivery by Midway Gas Company to Southern California Gas Company of $684,000.00 face value of first and refunding mortgage fifteen-year gold bonds of Midway Gas Company; and a public hearing having been held and the Commission being fully apprised in the premises and it appearing that public convenience and necessity will be served by the transfer of the properties hereinbefore described,

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It is hereby ordered that Southern California Gas Company be and the same is hereby granted authority to sell to Midway Gas Company the following property:

"(*a*) Compressor station described in Exhibit Z-3, filed in connection with Application No. 1644.

(*b*) The field gathering lines referred to in Exhibit Z-2, filed in connection with Application No. 1644."

It is hereby further ordered that Southern California Gas Company be and the same is hereby granted authority to assign to Midway Gas Company a contract effective January 1, 1914, between Honolulu Consolidated Oil Company, Southern California Gas Company and Midway Gas Company, said contract having been filed as Exhibit No. 1 in connection with Application No. 1644, to which reference is hereby made; also a contract effective January 1, 1914, between Southern Pacific Land Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company and Midway Gas Company, said contract having been filed as Exhibit No. 2 in connection with Application No. 1644, to which reference is hereby made.

The foregoing authority is granted upon the following conditions and not otherwise:

"(1) The first and refunding mortgage bonds of Midway Gas Company of the face value of $684,000.00, received in payment for properties herein authorized to be sold, shall be placed with a trustee subject to the lien of the first mortgage bonds of Southern California Gas Company.

"(2) Applicant shall file with this Commission a copy of the instrument releasing from the lien of its first mortgage the property to be sold and transferred to Midway Gas Company.

"(3) Applicant shall file with this Commission a copy of the instrument conveying the title to the properties herein authorized to be transferred to Midway Gas Company.

"(4) Applicant shall file with this Commission not later than thirty days after the transfer herein authorized shall have been made, a copy of the instrument by which the $684,000.00 of Midway Gas Company bonds are made subject to the lien of applicant's first mortgage bonds.

"(5) The price at which the properties herein authorized to be transferred may be sold shall not be binding upon this Commission or other rate-fixing body for purposes of fixing the rates to be charged by Midway Gas Company or Southern California Gas Company, or for otherwise reaching a determination upon matters affecting Midway Gas Company or Southern California Gas Company.

"(6) This order shall apply only to such sale or transfer as may have been effected on or before December 31, 1915."

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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DECISION NO. 2518.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF DEBENTURE BONDS OF THE FACE VALUE OF FIVE HUNDRED THOUSAND DOLLARS.

Application No. 1354.

Decided June 25, 1915.

Applicant having heretofore been authorized to issue $240,000.00 par value of its common stock to be sold at not less than par and having sold same at a premium of $24,000.00, applies for permission to devote such premium to reimbursing its treasury for capital expenditures in the sum of $24,421.99. Application granted.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

SUPPLEMENTAL OPINION.

In the above entitled proceeding the Railroad Commission on November 13, 1914, authorized San Diego Consolidated Gas and Electric Company to issue $250,000.00 face value of the company's 6 per cent debenture bonds and to sell the same so as to net the company not less than 93 per cent of the face value thereof, provided the company should not issue its bonds unless prior thereto, or concurrently with such issue, the company should issue its common capital stock at par in the sum of $240,000.00. The proceeds from the issue of said debenture bonds and common stock were directed to be applied for the purpose of discharging and refunding certain obligations of the company which were set forth in the order.

San Diego Consolidated Gas and Electric Company now reports that it has issued said bonds, receiving therefor the amount specified in the Railroad Commission's order, and that it has sold $240,000.00 par value of its common capital stock at a premium of $24,000.00.

San Diego Consolidated Gas and Electric Company reports that it has expended subsequent to November 1, 1914, the sum of $24,421.99 out of earnings for new construction as is shown by Exhibit "A" attached to the supplemental petition herein. The company now asks authority to reimburse its treasury to the extent of said premium of $24,000.00 on its common capital stock for said construction expenditures incurred subsequent to November 1, 1914.

I recommend that the application be granted and submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

San Diego Consolidated Gas and Electric Company having reported to the Railroad Commission that it has sold at a premium of $24,000.00

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the $240,000.00 par value of capital stock which the company was authorized to issue by Decision No. 1939 rendered on November 13, 1914, in the above entitled proceeding, and having asked authority to reimburse its treasury to the extent of said premium for the purposes hereinafter indicated, and the Railroad Commission finding that the purposes for which it is desired to utilize said premium on said common stock are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that San Diego Consolidated Gas and Electric Company be and the same is hereby authorized to reimburse its treasury out of the premium of $24,000.00 derived by the company from the sale of the common capital stock of the par value of $240,000.00 authorized to be issued by this Commission's Decision No. 1939, rendered on November 13, 1914, in the above entitled proceeding, for capital expenditures made from earnings subsequent to November 1, 1914, as follows:

(*a*) Installing two new Babcock and Wilcox, patent safety tube boilers, vertical steel header type, 600 h.p. capacity each. Total cost	$43,213 56	
Expended prior to November 1, 1914	40,005 83	
Expended since November 1, 1914		$3,207 73
(*b*) Installing one General Electric Company, type A.T.B. 4 poles—4,000 KW. 1800 R.P.M. generator with Curtis steam turbine, switchboard and accessories. Total cost	$94,464 89	
Expended prior to November 1, 1914	86,763 17	
Expended since November 1, 1914		7,701 72
(*c*) Installing three General Electric Company A.B. 60-1000 K.V.A. transformers; two 8000 cu. ft. blower set. Total cost	$13,760 43	
Expended prior to November 1, 1914	247 89	
Expended since November 1, 1914		13,512 54
Total		$24,421 99

San Diego Consolidated Gas and Electric Company shall within ten days after the application of said funds report to the Railroad Commission the fact of such application.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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DECISION NO. 2519.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE BY IT OF BONDS, THE EXECUTION AND DELIVERY OF A MORTGAGE TO SECURE THE SAME, THE ISSUE OF STOCK AND THE ISSUE OF NOTES PAYABLE AT PERIODS OF MORE THAN TWELVE MONTHS AFTER THE DATE THEREOF.

Application No. 1644.

Decided June 25, 1915.

Applicant, having evolved a plan of reorganization and completed arrangements for the acquisition of additional properties, applies to the Commission for permission to: 1. Issue $2,172,000.00 fifteen-year 6 per cent bonds, $1,450,000.00 to refund present outstanding bonds, $684,000.00 for the acquisition of a gas compressor near Taft and natural gas gathering lines in the Midway oil fields, $38,000.00 to reimburse treasury for capital expenditures heretofore made; 2. Issue $88,305.00 face value 6 per cent five-year notes for the purpose of paying accrued interest on outstanding bonds; 3. Issue $405,000.00 par value of preferred stock to be sold at not less than 80 for the purpose of acquiring certain gas wells and equipment; 4. Issue $332,350.00 par value of preferred stock to be issued at 80 to holders of Midway stock in return for assessments heretofore paid by them.

Applicant proposes to acquire all property of Southern California Gas Company and Northern Exploration Company in the Midway oil fields, including contracts at present held by the Southern California Gas Company for the purchase of natural gas from various producing oil companies, and after a detailed review of various matters bearing upon this application;

Held, That considering the hazardous nature of the business carried on by applicant and the desirableness of developing the region in which it operates, considerable more margin may be given to this application than would be the case in matters affecting utilities of a more stable nature. Application granted, excepting that the notes requested to pay bond interest are authorized instead for the purpose of reimbursing treasury for capital expenditures made from income, and provided that none of such stock or bonds shall be issued until the Commission has executed a final order approving applicant's proposed deed of trust and amended articles of incorporation.

Jared How, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application by Midway Gas Company for authority to issue $2,171,000.00 of bonds, $88,305.00 of notes and $737,350.00 par value of preferred stock. In detail, applicant proposes to issue these bonds, notes and stock as follows:

> One million four hundred fifty thousand dollars face value of first and refunding bonds to pay or refund a like amount of first mortgage bonds now outstanding;
>
> Six hundred eighty-four thousand dollars of first and refunding bonds to be issued at 90 per cent of face value for the purpose of

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acquiring the compressor plant and gathering lines of the Southern California Gas Company in the Midway oil fields in Kern County;

Thirty-eight thousand dollars face value of first and refunding bonds to reimburse applicant's treasury for moneys expended out of income for additions and betterments in the reconstruction of its main transmission line;

Eighty-eight thousand three hundred five dollars face value of five-year 6 per cent gold notes for the purpose of paying accrued and unpaid interest on outstanding first mortgage bonds of Midway Gas Company;

Four hundred five thousand dollars par value of preferred stock to be issued at 80 per cent of par value for the purpose of acquiring the properties of Northern Exploration Company, consisting of certain gas wells and implements;

Three hundred thirty-two thousand three hundred fifty dollars par value of preferred stock to be issued at 80 per cent of par value to the holders of outstanding stock of Midway Gas Company in return for assessments heretofore paid by said stockholders.

The history of Midway Gas Company was considered in detail in Application No. 202—Application of Midway Gas Company for certificate of public convenience and necessity (Vol. 2, Opinions and Orders of Railroad Commission of California, p. 208), decided February 20, 1913, and in Case No. 464, Charges of Public Utility Gas Corporations for Natural Gas (Vol. 3, Opinions and Orders of Railroad Commission of California, p. 1085), decided December 20, 1913. It is, therefore, essential only that attention be called to the purposes of this application. At the present time, Midway Gas Company owns no property except a 12¾-inch outside diameter transmission main 111.1 miles in length, extending from near Taft, Kern County, to Glendale, near the city of Los Angeles. This transmission main is leased to Southern California Gas Company under an agreement dated December 5, 1911. The applicant now proposes to acquire all the property of Southern California Gas Company and Northern Exploration Company essential to produce natural gas in the Midway oil fields in Kern County, and to transmit the same to the terminal of its transmission main at Glendale.

Heretofore the Northern Exploration Company, the Midway Gas Company and the Southern California Gas Company have performed separate functions in the process of developing natural gas and conveying it from the fields in Kern County to Los Angeles County. The Northern Exploration Company has been engaged in drilling gas wells in Kern County. The Midway Gas Company is the owner of the transmission main through which the gas is transported to Los Angeles County. The Southern California Gas Company leased this transmission main from the Midway Gas Company, purchased the natural gas in the fields, conducted it through gathering lines to its compressor station near Taft,

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Kern County, there compressed the gas and conveyed it through the transmission main to Los Angeles County, where it was sold and distributed.

Under the proposed arrangement, Midway Gas Company will take over the property of the Northern Exploration Company, the gathering lines and compressor station of the Southern California Gas Company, and, cancelling the lease of its transmission main to Southern California Gas Company, will itself convey the natural gas to Los Angeles County. Through this change, these functions—heretofore performed by three separate corporations—will be performed entirely by Midway Gas Company.

Heretofore the Southern California Gas Company has also purchased natural gas in the oil fields from Honolulu Consolidated Oil Company, Southern Pacific Railroad Company, Kern Trading and Oil Company and Associated Oil Company. The original contracts made by Southern California Gas Company with these corporations were later superseded by a series of new contracts made by Southern California Gas Company and Midway Gas Company for the purchase of natural gas. The new contract between Southern California Gas Company, Midway Gas Company and Honolulu Consolidated Oil Company bears date of May 1, 1914, and the new contract between Southern California Gas Company and Midway Gas Company, on the one hand, and Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company, on the other, bears date of May 1, 1914.

These two contracts provide that Southern California Gas Company may assign its interest in the contracts to the Midway Gas Company. It is now proposed under the plan of operation contemplated that these contracts should be assigned to Midway Gas Company. The effect will be that the Midway Gas Company will become the sole agency engaged in the purchase in the Midway oil fields of natural gas to be transported to Los Angeles County.

The parties in interest in the Midway Gas Company, Northern Exploration Company and Southern California Gas Company have found it advantageous to enter into the arrangement here proposed. This arrangement calls for the sale of certain properties by the Southern California Gas Company and the Northern Exploration Company to Midway Gas Company. The plan also calls for a reorganization of the Midway Gas Company. As at present constituted, Midway Gas Company has an authorized issue of $3,000,000.00 of common stock, of which $2,658,750.00 is outstanding. It has an authorized issue of $3,000,000.00 of bonds, of which $1,450,000.00 are now outstanding. Originally the company had $1,500,000.00 of bonds outstanding; $50,000.00 of these bonds have been retired.

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The company met with certain financial difficulties, due in part to unexpected and unusual costs, the destruction of a section of the transmission line by flood and problems in operation. An assessment was levied upon the stock which yielded $265,875.00. It was determined by the stockholders of the Midway Gas Company that a reorganization was desirable and it is in pursuance of this plan that this application was made. This plan was presented by the applicant through its executive officers and through a reorganization committee composed of S. Waldo Coleman, William G. Kerckhoff, Cyrus Peirce, Ferdinand Reis, Jr., A. C. Balch, and Harry R. Tobey.

Under the plan of reorganization, it is proposed that Midway Gas Company shall have an authorized issue of $3,500,000.00 of stock, consisting of 35,000 shares of the par value of $100.00 per share. This stock will be divided into 11,736 shares of the par value of $100.00 each of 7 per cent cumulative preferred stock, and 23,264 shares of common stock of the par value of $100.00 per share.

It is proposed that a portion of the common stock now outstanding be reclassified into preferred stock, as heretofore indicated, and that preferred stock be issued for the purpose of acquiring additional properties and to common stockholders in the amount of the assessments which they have heretofore paid. The preferred stock will partake of 7 per cent cumulative dividends, and thereafter 2 per cent will be payable upon the common stock, but any earnings thereafter remaining will be applicable to further dividends on the preferred stock, but such further dividends on the preferred stock will serve to reduce the dividends to which it may thereafter be entitled.

It is proposed further that Midway Gas Company shall have an authorized bond issue of $2,950,000.00 of first and refunding 6 per cent fifteen-year gold bonds. It is proposed that $1,450,000.00 shall be used to refund the outstanding bonds and that the balance will be used to acquire properties as heretofore indicated in this opinion, and for additions and betterments.

The nature of the securities, which it is here proposed to issue, will be considered in further detail in connection with the various features of the plan of reorganization.

I shall take up first the question of the securities which the applicant proposes to issue to acquire the properties of the Southern California Gas Company. These properties include the compressor station near Taft in Kern County and gathering lines in the Midway oil fields.

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In Exhibit "Z-3," applicant reports the cost of the compressor station which it desires to acquire as follows:

Main buildings and foundation	$72,450 64
Engines and compressors	133,102 88
Auxiliary equipment	37,632 82
Intake gas piping	23,097 87
Discharge gas piping	25,357 65
Crane	4,682 01
Water wells	13,010 31
Water tower and tank	3,335 51
Pump house	2,403 12
Cottages and bunkhouses	21,683 36
Auxiliary buildings	7,260 11
Water lines	7,914 04
Cooling pond—gas	6,512 25
Superintendence and administration	17,678 96
Engineering	14,243 94
Miscellaneous	16,745 80
Total	$407,111 27

The interest on the investment at 6 per cent is reported at $31,885.11. The total investment plus interest aggregates $438,996.38.

In Decision No. 1145 *in re* Case No. 464, this Commission found that the books of Southern California Gas Company showed an investment up to August 1, 1913, in gathering lines, amounting to $67,337.06. In Exhibit "Z-2," applicant reports the investment in gathering lines from August 1, 1913, to April 1, 1915, at $74,507.26. Of the additional investment, $70,963.23 is reported by applicant to represent the cost of a 10-inch line between sections 8, 32 and 24 and a point in sections 29, 31 and 23, all in Kern County, approximately 14 miles in length. The total investment in gathering lines to April 1, 1915, amounts to $141,844.32. Applicant desires to be allowed 6 per cent or $12,099.85 as interest on the investment to April 1, 1915. The investment plus the interest amounts to $153,944.17.

In addition to the foregoing property, applicant desires to assume certain contract rights and obligations heretofore entered into by Southern California Gas Company and Midway Gas Company for the purchase of natural gas.

The contract between Honolulu Consolidated Oil Company, hereinafter referred to as the Oil company; the Southern California Gas Company, hereinafter referred to as the Gas company, and the Midway Gas Company, hereinafter referred to as the Midway company, provides that it shall continue in force for a period of nineteen years from and including January 1, 1914, unless sooner terminated in accordance with the terms of the agreement. The lands subject to the agreement consist of the north half (N. ½) and southeast quarter (SE. ¼) of section two (2); all of sections four (4), six (6), eight (8), twelve (12)

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and fourteen (14), in township thirty-two (32) south, range twenty-four (24) east, held by the Oil company under mineral locations and the southwest quarter (SW. ¼) of section two (2) and all of section ten (10) in the same township, owned in fee by the Oil company.

By the terms of the agreement the Gas company is obliged to purchase annually from the Oil company 45 per cent of the quantity of gas which it transmits through the transmission main owned by the Midway company. If the Gas company does not for any reason receive or pay annually under the agreement between Southern Pacific Land Company, Associated Oil Company and Kern Trading and Oil Company (hereinafter collectively called Southern Pacific companies), and the Southern California Gas Company and Midway company, an amount of gas equal to 45 per cent of the gas transmitted, "the Gas Company will purchase from the Oil company, or pay for, annually for an additional amount of gas up to 75 per cent of the difference between said last-mentioned 45 per cent, and the amount so received, or paid for, under said contract with the Southern Pacific companies, or so much of such additional gas as the Oil company shall be willing to furnish." However, in no event, beginning January 1, 1915, and continuously thereafter during the term of the agreement, shall the Gas company purchase or pay for less than 10,000,000 cubic feet per day on the average and in the aggregate not less than 3,650,000,000 cubic feet per annum.

The Gas company further agrees that if at any time it shall construct or acquire any additional pipe line, or lines for the purpose of transmitting gas from the Midway field, it will purchase 45 per cent of the gas transmitted through such additional pipe line from the Oil company.

It is agreed that the Gas company shall have a continuing option during the term of the agreement to purchase at the price hereinafter indicated all gas produced by the Oil company or its assigns, which shall be in excess of the minimum amount of gas agreed to be purchased, provided that nothing in the agreement shall prevent the Oil company from selling for use in the Midway field, under its present contract, or any renewals thereof, to the same or other parties, not to exceed one-third of the gas used in the Midway field. The Oil company shall also have a prior right to use 4,000,000 cubic feet of gas per day in its development work and in the operation of its compressor plant.

The gas delivered by the Oil company to the Gas company shall be measured at the point of delivery at a four-ounce pressure basis above the atmosphere, to wit, fourteen and sixty-five hundredths (14.65) pounds absolute pressure, according to Boyle's law, and at an assumed temperature of sixty (60) degrees Fahrenheit. The Gas company shall provide, install, maintain and operate at its own expense, complete measuring devices for measuring all the gas delivered by the Oil company, or obtained from the Southern Pacific companies, or any other

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parties. The Gas company shall report weekly the daily quantities of gas received from the oil company, together with the total deliveries of gas into the main transmission line.

The Gas company shall pay the Oil company 5 cents per 1,000 cubic feet for all gas delivered to the Gas company and taken from the wells drilled or owned by the Oil company. For gas obtained from wells drilled by the Gas company on lands owned by the Oil company, the Gas company shall pay 3 cents per 1,000 cubic feet until the gas taken by the Gas company from such well or wells, figured at 2 cents per 1,000 cubic feet, shall equal the expense of drilling, developing and operating such well or wells. After being reimbursed for the cost of drilling, developing and operating such well or wells, the Gas company shall pay 5 cents per 1,000 cubic feet for gas taken from such well or wells drilled by the Gas company.

If for any reason the Oil company fails to produce and supply to the Gas company for thirty successive days an average of 10,000,000 cubic feet per day plus any additional amount which the Oil company has agreed to deliver, the Gas company after giving thirty days' notice, may enter on the lands of the Oil company and drill for gas. No wells shall be drilled within 750 feet of the lands of the Southern Pacific Land Company without its consent. To offset the three wells of the Oil company, known as "6/5," the Southern Pacific Land Company may drill wells within 750 feet of the boundary line of the property of Honolulu Consolidated Oil Company. The Gas company shall drill no well within 500 feet of an existing oil well, power station, pumping station, storehouse, tank or reservoir belonging to the Oil company, without written permission. Neither shall the Gas company drill any well within 750 feet of another gas well on the lands of the Oil company, unless such well was drilled by the Gas company.

The agreement may be terminated by the Oil company if the gas company fails to pay for the gas received within ninety days after written demand is made for such payment. The agreement shall be considered discharged in case the supply of gas is less than 2,500,000 cubic feet of gas for thirty consecutive days, or in case the Oil company is divested of its title and claims to the lands subject to this agreement.

The agreement contains other provisions which it is not necessary to consider here.

Another contract which Midway Gas Company proposes to assume is the contract between Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company, parties of the first part, and Southern California Gas Company and Midway Gas Company, parties of the second part. This contract has a life of nineteen years from and after January 1, 1914, unless sooner terminated as therein provided. Under the terms of the contract, Southern Cali-

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fornia Gas Company has agreed to purchase from the parties of the first part 45 per cent of the gas transmitted through the transmission main owned by Midway Gas Company. The Gas company has also agreed to purchase a daily minimum of 10,000,000 cubic feet and an aggregate of 3,650,000,000 cubic feet per annum. For the gas produced from wells drilled or purchased by parties of the first part, the Gas company agrees to pay 5 cents per 1,000 cubic feet, and for gas produced from wells drilled by it 3 cents per 1,000 cubic feet. The contract contains substantially the same provisions in regard to the sale of additional gas, the measurement of the gas, the location and drilling of wells and the termination of the contract as does the agreement between Honolulu Consolidated Oil Company and Southern California Gas Company and Midway Gas Company.

Except as otherwise provided in the agreement, the right and privilege of the Gas company to develop and remove gas from lands of parties of the first part is an exclusive one. However, nothing in the agreement shall prevent the Gas company from securing gas from other sources so long as it performs its contract obligations due to parties of the first part and Honolulu Consolidated Oil Company.

The Gas company is under obligation to offset each well upon adjoining land within 750 feet of a boundary line separating the lands of the parties of the first part from land of other owners, if such well shall produce at least 2,500,000 cubic feet per day open flow for thirty days after such well comes in. In no event, however, shall the Gas company be obliged to offset more than four wells to the mile. To protect the lands of parties of the first part against the wells of Honolulu Consolidated Oil Company, known as "6/5," the Gas company must within sixty days after the execution and delivery of the agreement begin to drill three offsetting wells on lands of first parties.

To summarize, Southern California Gas Company is under obligation to purchase 90 per cent of the gas it transmits through the transmission main owned by Midway Gas Company from the Honolulu Consolidated Oil Company, Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company; 45 per cent to be purchased from the first named company and 45 per cent from the last three named companies. From the Honolulu Consolidated Oil Company, Southern California Gas Company must purchase or pay for not less, on the average, than 10,000,000 cubic feet per day. A like amount must be purchased from or paid for to Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company. Thus Southern California Gas Company is under contract obligation to purchase a minimum of 20,000,000 cubic feet per day. While the company has transmitted 21,500,000 cubic feet as a maximum, the evidence shows

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that this is not a fair working average. The evidence shows that during December, 1914, the average daily transmission amounted to 19,000,000 cubic feet. During April, 1915, however, the average daily transmission was 14,500,000 cubic feet.

The cost of securing the aforementioned contracts is reported at $20,833.57. The contracts are to be assigned to Midway Gas Company. In payment for the acquisition of the contracts, Midway Gas Company proposes to issue bonds at 90 in such amount as to net $20,833.57.

The properties which Midway Gas Company in this application proposes to acquire from Southern California Gas Company, may be summarized as follows:

Compressor station, with interest to April 1, 1915	$438,996 38
Gathering lines, with interest to April 1, 1915	153,944 17
Cost of contract	20,833 57
Total	$613,774 12

To acquire these properties and an automobile listed at $1,000.00, Midway Gas Company asks authority to issue $684,000.00 of its first and refunding mortgage bonds at 90 per cent of face value.

The other properties which Midway Gas Company intends to take over are now held by Northern Exploration Company and consist of wells, implements, etc.

Northern Exploration Company was organized by those in control of Southern California Gas Company to conduct its natural gas development work in the Midway oil fields. The balance sheet of Northern Exploration Company as at March 31, 1915, shows the following assets and liabilities:

Assets.

Wells—		
Well 26–2	$40,884 72	
Well 22–1	42,852 84	
Well 26–3	26,825 60	
Well purchased—20–1	57,215 24	
Well purchased—20–2	29,174 28	
Well purchased—26–1	52,527 77	
		$249,480 45
(Well 22–1 not completed.)		
Working Assets—		
Drilling tools	$20,029 26	
Field lines	2,092 84	
Buildings	670 33	
Field instruments	326 74	
Automobiles	25 82	
Office furniture and fixtures	1,005 41	
Legal expense	2,184 03	
Equipment	285 00	
Supplies on hand	14,710 04	
Suspense	100 00	
Prepaid insurance	882 38	
		42,311 85
		$291,792 30

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Current Assets—		
Cash	$1,229 86	
Accounts receivable	10,153 10	
Southern California Gas Company well, etc.	77,364 59	
Midway Gas Company	3,095 15	
		$91,842 70
Work in Progress—		
Well 16–2	$15,733 53	15,733 53
Suspense (work abandoned)—		
Well 26–5	$2,587 87	2,587 87
Total		$401,956 40
Liabilities.		
Capital stock		$250,000 00
Current Liabilities—		
Notes	7,000 00	
Accounts payable, vouchers	21,741 07	28,741 07
Reserve for depreciation		44,095 85
Surplus—		
Received on contract, year to date	$43,205 05	
Less interest payments	425 95	
	$42,779 10	
Year ending December 31	36,340 38	
		79,119 48
Total		$401,956 40

Applicant's Exhibit "Z-4," as prepared by one of its officials, contains the following information in regard to the gas wells to be acquired:

"*Well No. 1, Section 22,* was drilled down to 2,400 feet without producing gas in paying quantities. The developments in this part of the field indicate that this well will be a dry hole, even if it is deepened, but in order to play safe, the derrick still remains intact and if at some future time developments would indicate that by going deeper, gas or oil could be produced, same can be done without very much expense.

Well No. 1, Section 20. This well delivered 16,000,000 cubic feet of gas during 12 days of January, 1915, and on January 23d was taken out of the line and blown to the atmosphere for a period of 24 hours, during which time it produced large quantities of mud, sand and water. An open flow measurement was taken which gave a reading of 4.8" of mercury through a 4" opening. This equals 5,000,000 cubic feet of gas per 24 hours at atmospheric pressure. The well was shut in and pressure recorded as follows:

Date	Pressure
1/24/15	325 lbs.
1/25/15	330 lbs.
1/26/15	345 lbs.
2/1 /15	375 lbs.
3/1 /15	390 lbs.
4/1 /15	430 lbs.
5/1 /15	442 lbs.

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Well No. 2, Section 20. This well delivered into the line 18,075,000 cubic feet of gas during 13 days in January, 1915. On January 23d it was blown to the atmosphere for 4 hours. An open flow test was then made and a reading of 4″ of mercury through a 3″ opening was recorded, which is equivalent to 2,700,000 cubic feet of gas per 24 hours at atmospheric pressure. This well was never completed in the drilling. Eleven and five-eighths inch pipe was cemented at 2,170 feet, this pipe being the water string. Eight and one-fourth inch casing was then run in the hole and when 2,144 feet of this size casing was installed (although there was 2,309 feet of hole drilled at this time) the well blew out and after same had blown for 15 days the Associated Oil Company decided to cap the well and turn it over to the Gas company. It is the opinion of the writer that the gas working against the bottom of the 11⅝-inch pipe has undermined the cement and permitted the top water to come down into the gas sands. The United Oil Company's No. 25 well which is just north of this well on the same section drilled into the big salt water sand at 2,840 feet and into a second salt water sand at 3,107 feet and produced about 10,000 barrels of salt water per day during July, 1913. This may also account for the presence of water in our No. 2 well. However, it seems more probable that this water comes from the upper sand of our own well. On January 23, 1915, after the open flow test was made, the well was shut in and pressures recorded as follows:

Date	Pressure
1/23/15	350 lbs.
1/24/15	363 lbs.
1/25/15	368 lbs.
2/1 /15	415 lbs.
3/1 /15	400 lbs.
4/1 /15	417 lbs.
5/1 /15	431 lbs.

This well can not be relied upon to deliver over 750,000 cubic feet of gas per day against a line pressure not to exceed 180 pounds. The reason that it delivered 18,000,000 cubic feet in 13 days was due to the fact that it was turned into the low pressure line delivering against a pressure of 60 pounds.

Well No. 1, Section 26. This well delivered 30,104,000 cubic feet of gas during ten days of January, 1915, and on January 23d was shut in, with pressures recorded as follows:

Date	Pressure
1/23/15	270 lbs.
1/24/15	275 lbs.
1/25/15	275 lbs.
2/1 /15	275 lbs.
3/1 /15	275 lbs.
4/1 /15	280 lbs.
5/1 /15	287 lbs.

The last open flow taken on this well was March 6, 1914, at which time the gauge recorded 17 pounds through 6¼-inch opening which is equivalent to 28,000,000 cubic feet of gas per 24 hours at atmospheric pressure. When this well was blown it threw a large amount

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of small pieces of dry shale which cut the derrick and made it very dangerous to the men working around the well. The well can be relied upon to deliver 1,000,000 cubic feet of gas per day against a line pressure not to exceed 260 pounds.

Well No. 2, Section 26. This well delivered 19,150,000 cubic feet of gas during 13 days in January, 1915, and was blown to the atmosphere on January 23d. An open flow measurement was taken which gave a reading of 9.4" of water through a 4" opening. This equals 1,920,000 cubic feet of gas per 24 hours at atmospheric pressure. The well was shut in and pressures recorded as follows:

Date	Pressure
1/23/15	525 lbs.
1/24/15	575 lbs.
1/25/15	575 lbs.
2/1 /15	575 lbs.
3/1 /15	735 lbs.
4/1 /15	773 lbs.
5/1 /15	790 lbs.

On previous tests this well has always accumulated a pressure of 900 pounds after being shut in for a period of about two weeks. However, after the test made in January, the pressure fluctuated from 375 pounds to 575 pounds each day until February 8th. On that date, 750 pounds was recorded and carried through on a straight line until February 11th, when it dropped to 735 pounds. It remained stationary at that pressure until February 14th, when it dropped to 500 pounds for seven hours and then went back to 735 pounds, remaining at that pressure until the present date (March 1st). At first I thought the casing had split, but it now looks as if the lower gases are passing into an upper reservoir which had become depleted during the time we were pumping this well through the low pressure system.

Well No. 3, Section 26. This well delivered 31,075,000 cubic feet of gas during 19 days of January, 1915, and was blown to the atmosphere on January 23d. An open flow measurement was taken which gave a reading of 5.6" of mercury through a 4" opening. This equals 5,600,000 cubic feet of gas per 24 hours at atmospheric pressure. The well was shut in and pressures recorded as follows:

Date	Pressure
1/23/15	223 lbs.
1/24/15	225 lbs.
1/25/15	228 lbs.
2/1 /15	235 lbs.
3/1 /15	250 lbs.
4/1 /15	285 lbs.
5/1 /15	295 lbs.

The bottom of this hole is 2,373 feet, but there is only 2,155 feet of 8¼" casing, the well blowing out when this amount of casing was put in the hole and inasmuch as the initial production tested 16,500,000 cubic feet open flow, it is reasonable to expect that, if

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another string of casing was set in the well, the same volume could again be obtained. My reason for so believing is that the Standard Oil Company No. 8 well, which is cased to 2,385 feet and located but a short distance away, has not dropped in volume since it was completed in 1913."

As shown above, the working assets of Northern Exploration Company are valued at $42,311.85. The total cost of the property which Midway Gas Company proposes to acquire from Northern Exploration Company is reported at $291,792.30. In the option given to Midway Gas Company by Northern Exploration Company, the cost of the property including interest to April 1, 1915, is placed at $317,000.00. In payment for the Northern Exploration Company's properties, Midway Gas Company desires to issue its 7 per cent cumulative preferred stock at 80 per cent of its par value.

To summarize, the cost of the property which Midway Gas Company desires to acquire, is reported as follows:

Compressor plant		$438,996 38
Plant	$407,111 27	
Interest to April 1, 1915	31,885 11	
Gathering lines		153,944 17
Lines	141,844 32	
Interest to April 1, 1915	12,099 85	
Attorney fees to draw up contracts		20,833 57
Northern Exploration Company		317,000 00
Wells	249,480 45	
Working assets	42,311 85	
Interest to April 1, 1915 (estimated)	25,207 70	
Automobile		1,000 00
Total		$931,774 12

On the basis hereinbefore indicated, Midway Gas Company, in order to acquire the aforementioned properties of Southern California Gas Company, would be obliged to issue bonds aggregating approximately $683,600.00. The acquisition of the properties of Northern Exploration Company, heretofore referred to, would necessitate a preferred stock issue of $396,000.00.

The applicant reported that it also proposed to purchase certain other properties from Northern Exploration Company of approximately $7,200.00, which will call for a total preferred stock issue of $405,000.00. The applicant has not yet submitted a statement of the additional properties in the sum of $7,200.00.

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Applicant's Exhibit "Z-9" shows the cost as at April 1, 1915, of the property of Midway Gas Company to have been as follows:

Item	Amount
Franchises	$1,252 80
Rights of way	38,306 89
Transmission mains	1,234,048 66
Patrol houses	19,958 21
Terminal stations and houses	65,868 87
Meters and regulators	14,412 28
Telephone lines	35,815 85
Special foundations	28,084 97
Auto equipment	10,941 61
Tools and equipment	6,142 65
General equipment	334 00
Board, house equipment	1,005 03
Stable and garage equipment	1,473 96
Water mains	15,958 97
Engineering equipment	605 80
General office equipment	333 72
Legal expenses during construction	5,640 00
Taxes during construction	641 06
Interest during construction	82,142 00
Miscellaneous	5,985 91
Total	$1,568,953 24

Assuming applicant's reports to be correct, the cost of the properties of Midway Gas Company plus cost of the properties to be acquired by Midway Gas Company, including tentatively the item of $7,200.00, aggregates $2,507,927.36.

The reorganization plan as submitted to this Commission calls for an amendment to the articles of incorporation of Midway Gas Company. The company has now an authorized common capital stock issue of $3,000,000.00 par value, divided into 30,000 shares of the par value of $100.00 each. All of the common stock has been issued. The reports on file with this Commission show that the 10 per cent assessment levied in 1913 has not been paid on stock aggregating $341,250.00, and that this amount of stock reverted to the company. It is now proposed to increase the authorized capital stock to $3,500,000.00 par value, divided into 35,000 shares of the par value of $100.00. Of the 35,000 shares, 23,264 shares are to represent common and 11,736 shares are to represent preferred stock. The preferred stock is to bear 7 per cent cumulative dividends. No dividends shall be paid on the preferred stock until the five-year notes referred to hereinafter shall have been paid, and until the company has fully complied with the sinking fund provisions of the deed of trust securing the payment of $2,950,000.00 face value of bonds dated December 1, 1914.

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The applicant has submitted the following statement in regard to the stock which it proposes to issue:

> "The nature and extent of the preference of such preferred stock shall be that the holders thereof shall be entitled to receive, out of the surplus profits of the company, cumulative dividends at the rate of 7 per cent per annum as and when declared and ordered to be paid by the board of directors (provided all the said promissory notes dated December 1, 1914, shall have been retired and all sinking fund payments, if any, theretofore accrued under the mortgage securing said $2,950,000.00 principal amount of bonds shall have been paid in full), and that if the earnings of the company in any year which shall be applicable to the payment of dividends upon its stock shall be more than sufficient to pay a dividend of 7 per cent upon its preferred stock and a dividend of 2 per cent upon its common stock, and if such dividends for such year and all prior dividends on such preferred stock shall have been declared and paid, the holders of such preferred stock shall be entitled to an extra dividend in an aggregate amount equal to the amount of all remaining surplus profits for such year; and that in case of liquidation or dissolution of the company, or of any distribution of its assets for other cause, the holders of such preferred stock shall be entitled to receive out of such assets the par amount of their stock and all accrued and unpaid dividends thereon before any payment out of such assets shall be made to the holders of its common stock. Provided that in case any extra dividends shall have been paid upon such preferred stock the amount of dividends to which such preferred stock shall thereafter be entitled shall be decreased from 7 per cent per annum by an amount which shall bear such proportion to 7 per cent upon the par value of such stock as the aggregate amount of such extra dividends theretofore paid on such preferred stock shall bear to the par value of such stock; and in such case, and in the event of the liquidation or dissolution of the company or any distribution of its assets for other cause, the holders of such preferred stock shall be entitled to receive out of such assets the par amount of their stock and all accrued and unpaid dividends thereon less the aggregate amount of such extra dividends theretofore paid on such preferred stock before any payment out of such assets shall be made to holders of such common stock."

It is also provided that $332,350.00 par value of the preferred stock shall be issued in exchange for an equivalent amount in par value of common stock now outstanding.

The reorganization plan involves the authorization of $2,950,000.00 face value of first and refunding 6 per cent gold bonds. The bonds are to be dated December 1, 1914, and mature December 1, 1929. To date, applicant has not submitted for approval the deed of trust securing the payment of the bonds. Any authorization, therefore, as to the issue of bonds will be preliminary, and a final order can be entered

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only after the Commission shall have examined and approved the proposed deed of trust. However, the testimony shows that the deed of trust is to contain a sinking fund or redemption fund provision requiring the following payments from net earnings:

December 1, 1915	$50,000
December 1, 1916	60,000
December 1, 1917	70,000
December 1, 1918	80,000
December 1, 1919	90,000
December 1, 1920	100,000
December 1, 1921	110,000
December 1, 1922	120,000
December 1, 1923	130,000
December 1, 1924	140,000
December 1, 1925	150,000
December 1, 1926	150,000
December 1, 1927	150,000
December 1, 1928	150,000
December 1, 1929	150,000
Total	$1,700,000

The sinking fund payments are to be cumulative. However, the nonpayment of a sinking fund installment shall not constitute a default.

Applicant desires to issue first and refunding mortgage 6 per cent gold bonds to the face value of $1,450,000.00 in exchange bond for bond, for the $1,450,000.00 face value of 6 per cent first mortgage serial gold bonds of Midway Gas Company, issued under its mortgage dated November 20, 1911, and now outstanding.

The payment both as to principal and interest of the first mortgage bonds of Midway Gas Company is guaranteed by Southern California Gas Company. The guarantee takes the form of an agreement dated December 6, 1911, by and between Southern California Gas Company and Mercantile Trust Company of San Francisco. The agreement or guarantee reads in part as follows:

> "*Whereas,* the Midway Gas Company, a corporation also organized under the laws of said State, has made and executed, unto said Mercantile Trust Company of San Francisco, as trustee for bondholders, its mortgage under date of November 20, 1911, mortgaging all property now owned or hereafter at any time acquired, in order to secure payment of the bonded indebtedness of said Midway Gas Company in the aggregate principal sum of three million dollars ($3,000,000.00) in gold coin of the United States, representing by its three thousand (3,000) serial coupon bonds of the denomination of one thousand dollars ($1,000.00) each, all dated November 20, 1911, and maturing at various dates on or before December 1, 1926, with interest thereon at the rate of six (6) per cent per annum, payable semiannually in like gold coin on June 1st and December 1st in each year; all as in said

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mortgage set forth and declared, to which mortgage reference is here made for a fuller description of its terms and of said bonds secured thereby;

And whereas, the said Midway Gas Company has sold and disposed of all the bonds secured by said mortgage, and has conveyed all the mortgaged properties to said Southern California Gas Company in consideration hereof, but subject to the lien of said mortgage;

Now, therefore, the said Southern California Gas Company in consideration of the premises and of said conveyance to it does hereby undertake and covenant to and with the Mercantile Trust Company of San Francisco, and its successors in said trust, as trustee for the holders of bonds and coupon secured and to be secured by said mortgage, and for their use and benefit, that the Southern California Gas Company assumes, and will pay at maturity all of the principal of every bond secured or to be secured by said mortgage, and also to pay the interest upon all said bonds as their coupons shall fall due, with interest at the same rate from maturity on all overdue interest; and further that it will assume and pay all other sums which may become at any time payable under or by reason of any of the covenants of said mortgage.

In witness whereof, the party of the first part has executed these presents under its corporate seal, pursuant to unanimous resolution of its board of directors, and to consent of all its stockholders.

SOUTHERN CALIFORNIA GAS COMPANY,
By A. C. BALCH,
Vice-president.
[SEAL] L. M. FARNHAM,
Secretary.

If the reorganization plan is effected, the guarantee of the Southern California Gas Company, as stated by Mr. Cyrus Peirce, secretary of Midway Gas Company, "evaporates and disappears." Regardless of the disappearance of the guarantee, Mr. Peirce testified that the holders of more than 93.8 per cent in amount of the bonds outstanding have deposited or agreed to exchange the bonds now held by them for first and refunding bonds and that but one bondholder, owning bonds to the face value of $5,000.00, objects to the reorganization plan.

Under date of May 31, 1915, Mr. Samuel C. Wiel, attorney for Mr. C. M. Farris, a bondholder of Midway Gas Company, filed a protest against the approval of the reorganization plan, contending that inasmuch as Southern California Gas Company has guaranteed the payment of the bonds now outstanding, it should discharge its obligations to such bondholders as have not consented to the proposed reorganization.

Under the present mortgage of Midway Gas Company, foreclosure proceedings may be instituted by the owners of a majority of the bonds outstanding. It would appear that the holders of 93.8 per cent of the bonds, who have deposited their securities under the proposed plan of

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reorganization, would be in a position to control such proceedings as might be taken, either to compel the payment of their obligations, to take over the mortgaged property or to bring about a general reorganization. However, the Midway Gas Company will continue in its present corporate form to carry on the natural gas business and will continue in ownership, not only of the properties heretofore held by it, but will acquire additional properties at an approximate cost of $938,974.12, including tentatively the item of $7,200.00 hereinbefore referred to. The lien of the outstanding first mortgage bonds of Midway Gas Company will continue in full force and effect. Such forbearance as there may be will be the voluntary forbearance of the bondholders. It is proposed by Midway Gas Company to place all of the deposited first mortgage bonds with a trustee, as additional security for the first and refunding bonds which it proposes to issue.

This Commission can not, nor would it, relieve Southern California Gas Company of the responsibilities under its guarantee. It is not the forum in which to enforce such claim as Mr. Farris may have either against Midway Gas Company or Southern California Gas Company.

Mr. Farris asks, therefore, that the Commission should not approve the new issue of securities on the ground that Southern California Gas Company should not be released from the guarantee which it has given on the first mortgage bonds. But Southern California Gas Company is not released from that obligation. Such bondholders as desire to release it voluntarily may, of course, do so; but Mr. Farris is under no such obligation, and the approval by this Commission of the proposed new issue of bonds would not serve to release Southern California Gas Company or Midway Gas Company from their obligation to Mr. Farris under the terms of the bonds which he holds.

As stated above, Midway Gas Company also desires authority to issue and deliver to Southern California Gas Company approximately $684,000.00 face value of first and refunding bonds at 90 in payment for its compressor station, gathering lines, two gas contracts relating to the development and purchase of natural gas, and an automobile.

Applicant also desires authority to issue and sell not more than $38,000.00 face value of first and refunding 6 per cent first mortgage serial gold bonds to reimburse the company for capital expenditures in the reconstruction of its pipe line.

Assuming that applicant was authorized to issue and sell its bonds in amounts as requested, there would remain in applicant's treasury as unissued, bonds to the face value of $779,000.00. The unissued bonds are to be used to finance future betterments, extensions, additions and improvements. Applicant does not at this time contemplate the construction of a second pipe line.

The reorganization plan also involves the issuance of $88,305.00 face value of five-year 6 per cent gold notes. The notes, or the proceeds

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derived from the sale thereof, shall be used "to acquire or pay" the June 1, 1914, and December 1, 1914, interest coupons on the 6 per cent first mortgage serial gold bonds of the Midway Gas Company issued under its mortgage dated November 20, 1911.

Applicant in Exhibit "Z-5" reports the assets and liabilities of Midway Gas Company as at April 30, 1915, as follows:

Assets.		
Fixed capital		$4,580,037 96
Current assets		67,830 70
Cash	$1,717 58	
Special deposits	36,786 00	
Due from consumers and agents	17,292 50	
Miscellaneous accounts receivable	8,202 27	
Materials and supplies	3,832 35	
Prepaid expenses		1,890 98
West Glendale Water Company stock		45 00
Treasury stock		155 18
Bond discount and expense		122,544 14
Suspense		118,843 30
Corporate deficit		197,401 23
Total assets		$5,088,748 49
Liabilities.		
Capital stock		$3,000,000 00
Assessment		265,875 00
Funded debt		1,450,000 00
Current liabilities		131,092 05
Bond interest past due	$94,250 00	
Notes payable	16,460 35	
Southern California Gas Company	2,061 24	
Miscellaneous accounts payable and audited vouchers and wages unpaid	18,320 46	
Liabilities accrued but not due		30,263 69
Bond interest	29,000 00	
Other interest	186 85	
Insurance and taxes	1,076 84	
Reserve for auto depreciation		3,044 48
Reserve for accrued depreciation		208,473 27
Total liabilities		$5,088,748 49

In Decision No. 1145 *in re* Case No. 464, this Commission found that 14 cents per 1,000 cubic feet was a reasonable rate for natural gas delivered at the southern terminus of the Midway Gas Company's transmission main. During the calendar year 1914, Southern California Gas Company reports that it has kept on its books a "suspense natural gas trading account." The account has been charged with the cost of all gas purchased in the fields at contract price and the amount due to the Northern Exploration Company for drilling operations with the amount due; to the Midway Gas Company for transmission of gas, in accordance with then existing contracts, and with the cost of operating field gathering lines, compressor station, etc. The account has been

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credited with all gas sold at 14 cents per 1,000 cubic feet. The year's operation shows the following results:

Receipts.

Gas used by Southern California Gas Company at 14 cents per thousand	$141,558 34
Gas used by Los Angeles Gas and Electric Corporation at 14 cents per thousand	387,371 05
Gas used at Taft compressor station at field cost	2,240 46
Gasoline sold at compressor station	245 98
Total receipts	$531,415 83

Expenses.

Cost of gas from Honolulu Consolidated Oil Company at 5 cents per thousand	$137,008 08
Cost of gas from Kern Trading and Oil Company at 3 cents per thousand	48,451 02
Operating field gathering lines	9,248 63
Operating compressor station	22,979 48
Operating transmission line	196,968 41
Operating gas wells	79,610 32
Total expenses	$494,265 94
Surplus	37,149 98

In Exhibit "Z-6," applicant reports earnings and expenses of Midway Gas Company and affiliated properties as follows:

	Actual nine months ending April 30	Estimated for May, June and July	Twelve months ending July 31, 1915
Revenue—			
Sale gas	$575,810 52	$177,500 00	$753,310 52
Miscellaneous sales	1,308 03	1,000 00	2,308 03
Totals	$577,118 55	$178,500 00	$755,618 55
Operating expenses—			
Cost of gas—Honolulu*	$117,311 65	$46,000 00	$163,311 65
Cost of gas—Associated Oil Co.*	77,412 12	27,600 00	105,012 12
Gathering lines	8,677 97	1,275 00	9,952 97
Compressor station	29,813 31	10,500 00	40,313 31
Main line	67,096 72	16,500 00	83,596 72
Totals	$300,311 77	$101,875 00	$402,186 77
Taxes			34,652 28
			$436,839 05
Cost allowed by Railroad Commission (Est. 464) for additional wells to be drilled and cost considered as operating expenses on basis of at least two cents per thousand on gas from Associated properties, daily minimum of ten million cubic feet			73,000 00
			$509,839 05
Balance			$245,779 50
Fixed charges as per schedule "Z-8"			135,678 00
Balance applicable to depreciation and dividends			$110,101 50

*During the months from August to December, inclusive, the company was not required to take a contract minimum of ten million cubic feet daily from each company. Had this provision been in force, the cost of gas taken from both companies for the entire year would have been increased by $23,677.00.

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The fixed charges and dividends on preferred stock may be summarized as follows:

2,171,000 par value first and refunding sixes	$130,260 00
88,305 par value five-year 6 per cent gold notes	5,298 00
737,300 par value 7 per cent preferred stock	51,611 00
Total charges	$187,169 00

As already indicated, the sinking fund or redemption fund calls for a payment of $50,000.00 on December 1, 1914, and this amount is increased by $10,000.00 annually up to 1925. Thereafter, the amount remains $150,000.00 up to and including December 1, 1929.

In the statement of earnings and operating expenses, the applicant has included as an expense, the cost of drilling additional wells in the amount of $73,000.00 for the year ending July 31, 1915. This is, of course, an estimate and subject to revision.

I have reviewed the various features of this application in some detail. There are some features that necessitate special comment.

It appears that the transmission main was designed to carry a maximum of 26,000,000 cubic feet per day at an initial pressure of 450 pounds per square inch, and a terminal pressure of 50 pounds per square inch. The Commission has heretofore made its calculations on the basis of a transmission of 18,000,000 cubic feet per day, relying on information given by officials of the company. In December, 1914, the company sent through its line an average of 19,000,000 cubic feet per day, but during April, 1915, the average daily conveyance was only 14,500,000 cubic feet per day. The maximum amount carried through the line in any one day was 21,500,000 cubic feet, and this for only a single day. At the same time, the Midway Gas Company in its contracts with the Honolulu Consolidated Oil Company and the various Southern Pacific companies has obligated itself to take a minimum of 20,000,000 cubic feet per day. In its estimate of the earnings submitted to this Commission, the applicant figures a daily average of 16,000,000 cubic feet. While no doubt leakage accounts for a certain proportion of this amount, it is clear that if this applicant obligates itself to take more gas at 5 cents per thousand cubic feet than it can convey through its pipe line, it will as a matter of course increase the price it pays per 1,000 cubic feet. Thus, if the company should be obliged to pay for 20,000,000 cubic feet at 5 cents per thousand cubic feet and receive and transmit only 16,000,000 cubic feet, the cost per 1,000 cubic feet would be 6¼ cents instead of 5 cents.

It is not necessary in this proceeding to pass upon the contracts. The price to be paid by Midway Gas Company for the gas which it purchases will be inquired into if it hereafter becomes pertinent in any rate proceeding.

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Some provision should be made by the applicant for the cancellation of the first mortgage bonds of Midway Gas Company, as soon as it shall have placed itself in a position to bring about such cancellation, and meanwhile these bonds should be deposited with such restrictions as to properly safeguard all interest.

I am loath in this matter to pass finally upon the preferred stock which the applicant proposes to issue, in view of the unusual nature of this preferred stock. For that reason any permission which may be given to issue the preferred stock will depend upon a final order after the amended articles of incorporation have been filed. Without copies of such amended articles of incorporation, it will obviously not be possible for this Commission to pass with full knowledge upon that feature of the application.

As heretofore stated, the same condition will hold as to the deed of trust.

In this connection, applicant's attention should be called to such relationship as there may be between its preferred stock and its first and refunding bonds under the proposed plan of reorganization. The bonds are to be redeemable at certain periods, but only out of net earnings. It appears also that the bonds will be redeemable in sums beginning with $50,000.00 a year and gradually increasing to $150,000.00 per year. At the same time, surplus earnings will be applicable to regular and extra dividends on the preferred stock. It is conceivable that unusual earnings by this company in the first few years would permit of undue payments upon the preferred stock at the expense of the bonds which mature at the later dates. It might be well, therefore, to insert a provision or condition by which the bondholders might share in these extra earnings. This will call for a certain modification of the sinking fund or redemption fund in the proposed deed of trust.

The notes, which the applicant proposes to issue in the sum of $88,305.00, are allocated to unpaid interest upon the first mortgage bonds. It appears, however, that applicant has taken the money with which such interest might have been paid and has used it to build additional facilities. I am, therefore, disposed to charge the proposed note authorization against the additions and allow them to the applicant for the purposes of reimbursement.

I believe the entire matter of the reorganization of these properties and the plan herein proposed should be viewed in a broad light. This company has undertaken in good faith to carry natural gas from the oil fields in Kern County to serve the people in Los Angeles. It was an enterprise involved with extreme risks, and those persons who have invested their money therein are entitled to the greatest consideration which the State, in consonance with its broad policy in regulating public utilities, can give. The enterprise, as is natural with the undertakings

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of this nature, has met with initial setbacks and has encountered extreme financial difficulties. The business is hazardous and the investment is speculative. These are matters which must be taken into account.

It appears that the applicant in this plan proposes to issue bonds and preferred stock to cover at actual cost plus interest the properties which it will employ in the development and transmission of the natural gas.

The new bond issue is predicated upon a hope of a 15-year life of the gas field. There can be no certainty about the life of a natural gas field, and this Commission can do no more than to take the opinion of those most skilled in these matters. The estimates as to the life of these gas fields have ranged from 10 years to 20 years. In issuing bonds which will run for 15 years, the company states that it is acting upon what it believes to be good advice upon this subject. Such a bond, however, must always be of a speculative character.

The ordinary principles of public utility finance, which imply a fixed condition of assets and a stable and continuous condition of income, are not applicable to the affairs of a natural gas corporation, such as is here under consideration. It partakes more of the nature of an oil or mining enterprise. For that reason, the regulating body should allow the greatest latitude commensurate with the public interest.

A large body of natural gas underlies these fields in the San Joaquin Valley. It is highly desirable that these natural resources be developed. It is incumbent upon the State to encourage a body of men which undertakes that development. Accordingly, I recommend that this application be granted. It will be necessary that the authority herein given be preliminary, as a final order can be issued only after this Commission has approved the deed of trust and after a copy of the applicant's amended articles of incorporation have been made available. Applicant's attention is directed to the suggestions heretofore made in this opinion, which will naturally come up for definite determination before a final order is issued.

Accordingly, I submit the following form of order:

ORDER.

Midway Gas Company having applied to this Commission for authority to issue: $2,172,000.00 of first and refunding mortgage 6 per cent bonds; $88,305.00 of five-year 6 per cent notes, and $737,350.00 par value of preferred stock; and a hearing having been held and it appearing that the purposes for which the applicant herein proposes to issue said bonds, said notes and said preferred stock are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Midway Gas Company be authorized, and it is hereby authorized, to issue $2,172,000.00 of its fifteen-year 6 per

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cent first and refunding mortgage gold bonds, $88,305.00 of its 6 per cent five-year notes, and $737,350.00 par value of its preferred stock.

The bonds herein authorized to be issued shall be issued upon the following conditions and not otherwise:

(*a*) One million four hundred fifty thousand dollars face value of said bonds shall be issued to refund or take up a like amount of applicant's first mortgage bonds now outstanding.

(*b*) Six hundred eighty-four thousand dollars face value of said bonds shall be issued at 90 per cent of face value for the purpose of acquiring the compressor plant and gathering lines of the Southern California Gas Company in the Midway oil field in Kern County as described in the opinion which precedes this order; and for the purpose of taking over the rights and obligations of Southern California Gas Company in the contracts heretofore entered into between Honolulu Consolidated Oil Company and Southern California Gas Company and Midway Gas Company, and Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company and Southern California Gas Company and Midway Gas Company; and for the additional purpose of purchasing an automobile from Southern California Gas Company.

(*c*) Thirty-eight thousand dollars of said bonds shall be issued for the purpose of reimbursing the applicant's treasury for moneys expended out of income for extensions and betterments and for reconstruction of its transmission line.

The $88,305.00 of five-year 6 per cent notes herein authorized to be issued shall either be sold for not less than the face value of said notes, or said notes may be issued directly to the holders of applicant's first mortgage bonds, in accordance with applicant's plan of reorganization submitted herewith; said notes to be issued to said bondholders in lieu of a like amount due bondholders, but used for certain betterments to applicant's plant.

The preferred stock herein authorized to be issued shall be issued for the following purposes and not otherwise:

(1) Three hundred ninety-six thousand dollars par value of said preferred stock shall be issued at 80 per cent of par value for the purpose of acquiring the properties of Northern Exploration Company, consisting of certain gas wells, implements, etc., as specified in the foregoing opinion.

(2) Nine thousand dollars par value of said preferred stock, or so much thereof as may be necessary, shall be issued to acquire the property of Northern Exploration Company acquired by said Northern Exploration Company subsequent to April 1, 1915, provided that none of the $9,000.00 shall be issued until applicant has submitted to this Commission a statement showing the property to be acquired and shall

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have received a supplemental order from this Commission authorizing it to issue said $9,000.00, or any part thereof.

(3) Three hundred thirty-two thousand three hundred fifty dollars par value of said preferred stock shall be issued at 80 per cent of par value in exchange for 2,658.75 shares of applicant's common stock to such holders of applicant's common stock as shall have paid the assessment heretofore levied upon the common stock, in accordance with applicant's plan of reorganization submitted in the application herein.

The bonds herein authorized to be issued shall not be issued until this Commission has issued a supplemental order approving the deed of trust under which applicant proposes to issue said bonds.

The preferred stock herein authorized to be issued shall not be issued until this Commission has issued a supplemental order approving the amended articles of incorporation of Midway Gas Company, describing the terms and conditions of said preferred stock.

The authorization herein granted to issue bonds and preferred stock is granted upon the following further conditions:

(1) The valuation referred to in the foregoing opinion of the property of the Midway Gas Company, and of the property which it proposes to acquire, or the purchase price herein authorized to be paid, shall not be binding upon this Commission or any other rate-fixing body for rate-fixing purposes, or otherwise.

(2) Midway Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds, notes and stock hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to this Commission stating the sale or sales of said bonds, notes or stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(3) The authority herein granted shall apply to such bonds and stock as shall have been issued on or before June 30, 1916.

(4) The authority herein granted is conditioned upon the payment by applicant of the fee prescribed in the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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DECISION NO. 2520.

IN THE MATTER OF THE APPLICATION OF PACIFIC LIGHT AND POWER CORPORATION FOR THE ESTABLISHMENT OF RATES FOR ELECTRICITY AT BIG CREEK.

Application No. 1412.

Decided June 25, 1915.

The construction company, while building applicant's generating plant at Big Creek, constructed distributing lines to serve its employees and also undertook to serve a number of other residents, which service applicant continued after the completion of its plant at the same rates as originally fixed by the construction company. These rates it subsequently increased from 50 to 100 per cent without the necessary authorization of this Commission and it now petitions that such rates be established as the legal rate for this district.

Held, That the distributing system at Big Creek was primarily constructed to serve the considerable number of employees engaged in work on applicant's generating plant and that the few consumers now served in this district can not be expected to pay a rate permitting of a return on the entire value of this system. Application denied and applicant directed to refund to consumers the difference between the increased rate and the original rate.

S. M. Haskins, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by Pacific Light and Power Corporation for authority to increase the rates for electric service supplied by it at Big Creek in Fresno County.

It appears that petitioner owns a certain hydroelectric plant at Big Creek which was constructed by the Stone and Webster Construction Company. The construction work at the Big Creek plant was started during the winter of 1911–1912 and the plant was turned over to the owners about June, 1913. During the construction period referred to, electric energy was utilized for power purposes by the Stone and Webster company and, incidentally thereto, electric lights were supplied to the various buildings of the construction camp. To furnish electric lighting service to its construction camp, the Stone and Webster company ran certain wires, suspended mostly from trees, to the various points where the lights were to be utilized. Due to the fact that a large force of men were engaged upon the work referred to for a period of approximately two years, other persons than the Stone and Webster company's employees located at Big Creek and these people requested electric service, which service, in several instances at least, was supplied to them by the construction company at a straight meter rate

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of 8 cents per kilowatt hour or a flat rate of 35 cents per month per 16 candlepower lamp. Upon the completion of the construction company's work at Big Bend during the summer of 1913, the electric service theretofore supplied by the Stone and Webster company to persons other than its employees was continued by petitioner at the same rates until about June, 1914, when petitioner, without authorization from this Commission as required by law, arbitrarily raised said rates to those shown in the following tabulation:

TABLE I.

Increased Rates for Electric Service at Big Creek.

First 25 K. W. H. at	15 cents per K. W. H.
Next 25 K. W. H. at	14 cents per K. W. H.
Next 25 K. W. H. at	13 cents per K. W. H.
Next 25 K. W. H. at	12 cents per K. W. H.
Next 50 K. W. H. at	11 cents per K. W. H.
Next 50 K. W. H. at	10 cents per K. W. H.
All over 200 K. W. H. at	9 cents per K. W. H.

Minimum bill to be on the basis of 10 cents per lamp.
Minimum bill in any instance $2.00 per month.

For power—

First 25 K. W. H. at	12 cents per K. W. H.
Next 25 K. W. H. at	11 cents per K. W. H.
Next 25 K. W. H. at	10½ cents per K. W. H.
Next 25 K. W. H. at	9½ cents per K. W. H.
Next 50 K. W. H. at	8½ cents per K. W. H.
Next 50 K. W. H. at	8 cents per K. W. H.
All over 200 K. W. H. at	7 cents per K. W. H.

Minimum bill to be based upon $2.00 per h. p. for connected load.
Minimum monthly bill, $2.00.

The establishment by petitioner of the rates shown in Table I has resulted in a general increase of from 50 per cent to 100 per cent in all rates theretofore charged by it for electric service supplied at Big Creek.

In addition to asking the approval by this Commission of the increased rates so established, petitioner requests authority to make effective certain rules and regulations as follows:

TABLE II.

Proposed Rules and Regulations.

1. All necessary line extensions to consumers residing within 100 feet of the company's existing mains will be made at the company's expense.

2. All line extensions in excess of 100 feet of the company's existing mains shall be paid for by consumer, and, in the event that consumer desires the company to maintain such additional extensions, then the extension will automatically become the property of the company.

3. Any consumer using service for periods of one, two or three months during the summer, shall deposit in advance with the company a sum sufficient to cover the cost of the probable consumption during this period at the established rates, which sum shall in no instance be less than the monthly minimum times the number of months used.

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Petitioner attempts to justify the increase of rates at Big Creek by the contention that the superintendent of Stone and Webster Construction Company had violated specific instructions not to furnish electric service except to its employees, which violation was not discovered by petitioner until after the construction company had completed its work and until after complaint regarding the rate increase was made to this Commission by one of petitioner's consumers at Big Creek. It is further explained that the rates formerly charged by the Stone and Webster company were continued by petitioner's employees through mistake.

In support of the application for authority to increase the rates and establish certain rules and regulations, petitioner alleges that, owing to the high elevation (approximately 7,000 feet) and the severe climatic conditions existing at Big Creek, the cost of serving the few consumers, whose demands are largely of a seasonal nature, is excessive and that even at the advanced rate put into effect in 1914 the service is supplied at a loss.

The investment of petitioner in distributing lines and accessory equipment is claimed to be as follows:

TABLE III.

Statement of Distribution Capital in Cascada District by Pacific Light and Power Corporation.

Investment—	
Poles and fixtures	$263 35
Overhead system	789 06
Line transformers and devices	610 85
Services	335 41
Meters	213 51
Total	$2,212 18

In connection with the statement of capital shown in Table III it would appear that this statement covers the entire original cost of petitioner's distributing lines and equipment including that installed by the Stone and Webster company for service to its employees and for lighting its construction camp at Big Creek. Under such circumstances it would seem that a large part of this capital is chargeable to, and is in all probability included in, the cost of the Big Creek plant. At any event it is clearly improper to charge to a few isolated consumers an investment which, upon petitioner's own statement, was made for an entirely different purpose and which purpose has already been accomplished.

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Petitioner's statement of operating revenue and expenses is given in the following table:

TABLE IV.

Income Account—Cascada District.

1. Gross revenue			$614 64
2 Operating expenses—			
(*a*) Superintendence	$28 66		
(*b*) Resetting and removing transformers and meters	10 55		
(*c*) Electric meter operations	9 04		
(*d*) Commercial incandescent lamp installations and renewals	9 45		
(*e*) Inspection and repairs, consumers' installations	3 13		
(*f*) General labor and supplies	1 19		
		$62 02	
3. Maintenance—			
(*a*) Poles and fixtures and overhead system	$68 45		
(*b*) Line transformers and devices	4 54		
(*c*) Station transformers	5 02		
(*d*) Services	149 90		
(*e*) Meters	20 71		
(*f*) Miscellaneous	26		
		248 88	
4. General and commercial expenses		122 00	
5. Depreciation		133 88	
6. Taxes 4.6 per cent of gross		29 01	
			$595 79

Owing to the lack of detail in connection with the statement appearing in Table IV the showing made is of little value in connection with this proceeding, due to the fact that no attempt has been made to segregate costs applicable to the thirteen consumers at Big Creek from any other consumers which may be receiving service in what is termed the Cascada District. It is also reasonable to suppose that a considerable number of the camp buildings erected at Big Creek by the construction company are now vacant and probably others are being used by petitioner for storehouses, machine shops, employees' quarters, etc. Undoubtedly such of the buildings as are now used are furnished with electric lighting service by the same facilities which supply the several patrons of petitioner who are not in its employ, and no segregation of either investment or expense has been made which will show the relative cost of the free service to employees and that cost properly chargeable to other consumers at Big Creek.

In connection with the maintenance expense charged and depreciation claimed by petitioner in the Cascada District, as shown in Table IV, I desire to call particular attention to items 3 (*a*), 3 (*d*) and 3 (*e*), which indicate that the cost of maintaining "Poles and fixtures and overhead system," "Services," and "Meters," amounts to 6.45 per cent, 44.85 and 9.7 per cent, respectively, of the investment claimed. The first item, 3 (*a*), appears high even under the severe climatic conditions alleged to exist at Big Creek; the second item.

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3 (*d*), is undoubtedly excessive under any possible conditions, and the third item, 3 (*e*), can hardly be justified by the facts disclosed from evidence introduced at the hearing. A careful consideration of the matter of the maintenance cost claimed by petitioner, convinces me that with the expenditures shown in Table IV each item of distribution equipment would be replaced at least once, and in the case of services not less than six times through maintenance before the expiration of its natural life, and under these circumstances it would be unnecessary to consider the matter of depreciation in connection with such facilities.

In view of all the facts as presented, there can be no escape from the conclusion that petitioner, whatever may be the justification for higher rates at Big Creek if all the facts were known, has failed to show that an increase is warranted or should be permitted at this time, and I will accordingly recommend that petitioner's application for permission to establish rates in excess of those in effect at the time the Stone and Webster Construction Company completed its work at Big Creek, and to put into effect certain rules and regulations, be denied without prejudice.

As to the increased rates heretofore established by petitioner for electric service at Big Creek, it is admitted that such increases were made without application to, or authority from, this Commission as specifically required by section No. 63, Public Utilities Act, and in view of the fact that the only legal rates applicable to service supplied at Big Creek were the rates actually in effect at the time petitioner commenced operations at that place, it will be necessary that petitioner refund to its several consumers all amounts collected by it in excess of the lawful rates as herein indicated, and I recommend that the Commission's order specifically require such refunds.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision,

It is hereby ordered that the above entitled application be and the same is hereby dismissed without prejudice; and

It is further ordered that within twenty (20) days from the date of this order, Pacific Light and Power Corporation shall refund to its consumers all amounts collected by it for electric service supplied at Big Creek in excess of those amounts due under the rates in effect in June, 1913, and that a true and correct statement showing in detail the refunds made under this order shall be filed by Pacific Light and Power Corporation with this Commission not later than thirty (30) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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DECISION NO. 2521.

IN THE MATTER OF THE APPLICATION OF A. W. McDONALD, LESSEE, OF MIEN'S LANDING WAREHOUSE FOR AN ORDER FIXING WAREHOUSE RATES.

Application No. 1697.

Decided June 25, 1915.

Applicant, operating a warehouse for the storage of grain under an existing schedule of rates which includes 40 cents per ton for first two months, 60 cents for three months and 75 cents per ton per season, applies for permission to establish a flat rate of $1.00 per ton per season or 50 cents for first thirty days and 75 cents to February 1st, and it appearing that such rates are reasonable, application granted.

A. W. McDonald, in propria persona.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application to increase warehouse rates at Mien's Landing warehouse, located on Montezuma Slough, about two miles from the village of Birds Landing in Solano County, and was presented by A. W. McDonald, who leases and operates the property on a basis of 50 per cent of the proceeds.

This warehouse measures 105 x 125 x 20 feet and should, if filled to capacity, after allowing one-fourth the total space for aisles, hold over 4,000 tons of grain. As a matter of practice, there is rarely more than half that amount stored. Grain is the only crop stored and consists of wheat, barley and oats, wheat being by far the most important. Applicant has about ten steady patrons, and his receipts from this source fluctuate from year to year with the size and character of the crops grown. The following table will show, in so far as it is complete, the results of the operation of this warehouse and the wharf connecting it with the adjacent slough:

	Tonnage	Receipts	Expense		Balance
			Handling	Repairs	
1911	1,075				
1912	1,587	$507 35		$500 00	
1913	517	321 50	$121 00	101 64	$98 86
1914	1,680	894 19	237 50	102 80	553 89

These figures are necessarily incomplete for the reason that applicant has kept no systematic accounts; however, they are sufficiently plain to indicate the margin of profit contemplated in conducting this utility.

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Of course, warehouseman does not rely wholly upon his income from this source as a means of livelihood, since he conducts a small private coal and dairy business, which, in a way, fits into the public service so as to make it possible to have some one at the warehouse when needed. The evidence showed that about one-third of applicant's time is devoted to the warehouse business. Being located on the slough in the open country, it has been found impracticable to meet some of the conditions incident to quick handling demanded of other warehousemen more favorably situated with respect to the sources from which labor can be had. On the other hand, applicant has been able to give creditable service by following established customs obtaining in the neighborhood with reference to loading barges, scows, etc. Rates authorized in the accompanying order will contemplate a continuation of these practices and such additional service as is consistent with applicant's location.

This property, including a wharf some 200 feet long extending to deep water, was built in 1875 at an outlay alleged to be $3,000.00, the wharf itself costing about $800.00. These properties are now said to be worth $1,500.00 and $500.00 respectively. Applicant's facilities are as follows:

4 ordinary trucks;
1 Fairbanks wagon scale;
2 portable platform scales;
2 railroad hand trucks.

It is alleged in this application that the cost of labor for warehouse purposes has materially increased within the last few years, the testimony showing that where formerly men could be had at a rate of $2.00 per day, working from 6:00 a.m. to 8:00 p.m. when required, it is now impossible to get this class of service for less than $2.25 to $2.50 per day of eight or nine hours. There was no effort to controvert this testimony; in fact, it clearly coincided with the evidence in other applications filed with the Commission and pertaining to the same matter in other portions of the State.

As before indicated, this property is not owned by applicant, but is operated for 50 per cent of the proceeds. Not being familiar with the requirements of the law, applicant had not, up to the time of asking for an increase in his warehouse rates, filed with the Commission a rate schedule, etc., as the statute requires. However, it appears that the rates at present charged are as follows:

Grain.

Storage, 2 months	**40 cents per ton**
Storage, 3 months	**60 cents per ton**
Storage, per season (June 1st to May 31st)	**75 cents per ton**
Wharfage	**25 cents per ton**

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Advances in these rates and a modification of storage periods are desired as follows:

Storage, first 30 days	50 cents per ton
Storage, to February 1st	75 cents per ton
Storage, per season	$1.00 per ton

The toll charge of 25 cents per ton for handling grain over applicant's wharf, as shown in the present rates, is collected only in instances where this service is demanded for handling grain which has not been on storage in applicant's warehouse. No request has been made to alter this charge and the same will have no part in the accompanying order, except that the rate, together with all other rates, if any, for other classes of public utility service should be filed with the Commission as the law provides. Should applicant find it necessary to take any other farm products or merchandise for regular storage, which is not probable, a supplemental schedule should be filed with the Commission to cover such additional storage.

Owing to the meager data affecting properties involved in this application, it is not possible to fix rates based upon their value; however, from the information at hand, I believe that the patronage of this warehouse would not sustain a system of rates commensurate with the investment. The rates which will be authorized will, therefore, be referable more to the cost of operation and the customs in vogue than to a strict property value.

As was true in another application (Application 1682), heard at the same time and affecting storage rates in the same vicinity, the usual publicity was given and a notice was sent personally to each of applicant's patrons advising them of their right to be present and be heard, but none appeared, nor was there any protest presented on behalf of such patrons. On the other hand, a representative of the Grain Trade Association of San Francisco was present in the interest of the grain buyers of that city, and so far from protesting against the rates proposed, the said association's spokesman thought the same should be granted as tending to a better class of warehouse service—a more important matter from his standpoint than a rate adjustment.

For the reasons set forth herein and with the general idea of allowing applicant sufficient remuneration to provide for first-class warehouse service, I am of the opinion and find as a fact that the rates applied for, as elsewhere enumerated in this opinion, are just and reasonable rates and should be authorized.

I recommend the following form of order:

ORDER.

A. W. McDonald, lessee of the property known as Mien's Landing warehouse, having applied to the Railroad Commission for an order authorizing an increase in his warehouse rates for the storage of grain

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at Mien's Landing, and a public hearing having been held upon such application and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted, and that applicant be permitted to charge and collect the following rates for the storage of grain herein found to be just and reasonable:

Grain.

Storage, first 30 days	**50 cents per ton**
Storage, to February 1st	**75 cents per ton**
Storage, per season (June 1st to May 31st following)	**$1.00 per ton**

It is further ordered that the collection of these rates be and the same is hereby conditioned upon the performance of all services usually rendered in handling this commodity, such as receiving, weighing, piling, carrying in storage, necessary resacking or placing in proper condition for shipment and delivery.

Applicant is hereby authorized to place in effect as of June 1, 1915, a schedule embracing the foregoing rates and conditions, provided that the same shall be promptly filed with this Commission as the law provides.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

DECISION NO. 2522.

IN THE MATTER OF THE APPLICATION OF MRS. LENA DINKELSPIEL, SOLE OWNER OF BIRDS LANDING WAREHOUSE FOR AN ORDER FIXING RATES.

Application No. 1682.

Decided June 25, 1915.

Applicant, operating a warehouse for the storage of grain and various other commodities, has in effect at present for grain storage a rate of 75 cents per ton per season, 60 cents per ton for three months and 40 cents per ton for two months and upon a showing that such rate is non-compensatory is authorized to establish, for the storage of grain a schedule of $1.00 per ton per season, 75 cents per ton to February 1st, 50 cents per ton for thirty days, such rates to include handling, weighing, piling, etc., and to become effective for the season beginning June 1, 1915.

Edward Dinkelspiel, for Applicant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by Mrs. Lena Dinkelspiel, of Suisun, California, to increase storage charges heretofore assessed for the service rendered and responsibility assumed in storing and protecting grain accepted for this purpose, and to facilitate its transportation by common carrier or vessel. It is also proposed to change the periods for which the less-than-season storage rates apply, so as to effect an increase in these cases as well. In addition to the rates applicable to the storage of grain, there is a rate of 25 cents per ton at present in effect in connection with these warehouses covering wharfage service when shippers demand this privilege without having passed their grain through one of the warehouses. The returns for this wharfage service are, however, practically negligible, as is evidenced by this utility's annual report to the Commission. With the exception of some small lots of hay, grain is the only commodity now accepted by applicant for storage. Rates authorized under this application will apply to the storage and incidental handling of grain only, there being no request for an adjustment of the charges now assessed for the storage of hay. The toll charge of 25 cents per ton for passing over the wharf farm products which have not been on storage in applicant's warehouses will likewise remain undisturbed. Should it at some future time be found necessary, or desirable, to alter this toll charge, the matter may be taken up by either this applicant or by the Commission. While, as stated, rates herein authorized will apply to the storage and handling of grain only, warehouseman may, in the future course of business, find it necessary to accept for storage other products or merchandise. This situation can, of course, be met by filing a supplemental schedule, subject to approval by the Commission.

The rates now charged by this utility are as follows:

Grain.

Storage, per season	75 cents per ton.
Storage, for 3 months	60 cents per ton.
Storage, for 2 months	40 cents per ton.
Toll over wharf	25 cents per ton.

Hay.

Storage, per season	$1 00 per ton.

Applicant desires to alter these rates and storage periods, so as to provide returns as follows:

Grain.

Storage, per season	$1 00 per ton.
Storage, to February 1st	75 per ton.
Storage, 30 days	50 per ton.

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The storage season in this locality begins June 1st of each year and ends May 31st of the succeeding year. Where reference is made in this opinion, or the order following, to the storage season, it will be understood to include these dates.

Applicant's warehouses are situated on Montezuma Slough, a waterway traversing a portion of Solano County, and passing about one mile from the village of Birds Landing. Small schooners, barges and scows are the class of vessels used for transportation to outside markets. The property is fairly well located for the purposes to which it is devoted, the only unusual danger to the storage of grain being an occasional rise in the Sacramento River and the consequent backwater in the slough. There is at present no rail connection, but the Oakland, Antioch and Eastern Railway's line runs through the continuous farming district and could be used in an emergency.

All structures involved in this application, including warehouses and wharves, are built of wood and rest upon wooden piles, and considering that they were built more than forty years ago, are in a fair state of preservation. The warehouses and wharves are connected by detachable causeways, and upon one of the wharves is located the scale and scale house. These facilities, together with portable scale and the usual complement of trunks, etc., constitute the warehouse equipment. The structures measure as follows:

Large warehouse, 120 x 150 x 16 feet.
Auxiliary warehouse, 36 x 60 x 16 feet.
Main wharf, 50 x 100 feet.
Small wharf, dilapidated and irregular in shape.

Tonnage for the years 1913–1914—the only figures available from applicant's reports—was handled as follows:

1913	293 tons.
1914	2,347 tons.

It is probable that the 1914 tonnage represents no more than one-third of the grain which could be stored in these warehouses.

Applicant's financial statements show net receipts for the five years, beginning 1910, as set forth below:

1910	$193 89
1911	298 49
1912	556 80
1913	123 20
1914	270 95
Total	$1,443 33
Average net receipts per annum	$288 66

It should be stated that these amounts do not include state and county taxes, for the reason that the warehouse property was included for

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taxation purposes with other personal property, making an accurate segregation impossible. Annual depreciation accounts have not been kept, nor were original cost figures available. However, it is not considered essential, under this application, to go into these matters fully, since a glance at the estimated values of applicant's warehouse property, set forth elsewhere in this opinion, would clearly indicate that a fair return on the money here invested would mean the establishment of rates unreasonably high and the consequent loss of patronage. Regardless of sums which may be invested in warehouse property, or the high class of service which may be rendered at the best regulated warehouses, there is a medium charge—a fair rate—above which growers can not afford to pay; such rate being limited in all cases by the market price of stored products and the feasibility of providing private storage. In another part of this opinion are shown the rates which applicant considers fair and reasonable and tending, in a degree, to offset the alleged losses which are sustained from year to year.

Applicant's property is insured for $5,000.00 and is estimated to be worth from $8,000.00 to $10,000.00, exclusive of the land devoted to warehouse purposes, which itself is given a value of $1,500.00; however, for reasons just set forth, I believe that there could be no special advantage in passing upon these values at this time. The rates which will be recommended will, therefore, be based entirely upon the showing made in the application and the facts developed at the hearing with reference to operating revenue alone.

As has been shown, the average annual net receipts, exclusive of taxes, for the years 1910–1914, inclusive, amounted to $288.66; state and county taxes deducted, this amount would probably be reduced to the sum of $200.00. Considering that the buildings are now forty years old and that the useful life of such structures could not ordinarily be more than sixty years, a minimum allowance for depreciation would easily absorb this $200.00 and leave an annual deficit besides. The testimony in this application showed that the cost of labor available for warehouse purposes has increased in the vicinity during the last decade from 25 to 40 per cent, while the class of labor now to be had is inferior to that of former years. It should be explained, however, that this property is operated by a superintendent, who, himself, pays for all labor and receives for compensation 60 per cent of the total gross income. The owner's net average annual receipts previously referred to would, of course, not be affected by the labor cost, if this agreement should be continued. There was no testimony to show that the service heretofore rendered has been in any way unsatisfactory to applicant's patrons. Rates authorized under this application will be based upon the specific understanding that the warehouse service will not be allowed in any sense to deteriorate, and shall consist of a high class of service of the

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kind usually rendered, including receiving, weighing, piling, carrying in storage, resacking grain when necessary and loading out.

Although the usual publicity was given to the hearing in this application, and personal notice of the proposed increase in the rates was mailed to each of applicant's twenty-six patrons, not one appeared to protest against granting the application. This fact leads to the assumption that the rates applied for are not looked upon by those most vitally concerned as being unjust or unreasonable.

A representative of the Grain Trade Association of San Francisco was present at the hearing and expressed the general satisfaction of grain buyers with the plan to allow to warehousemen fair and reasonable rates, as tending to improve the service. Good service, then, will be the strong phrase under this authorization and it will be expected that farmers receive that prompt, continuous and efficient service which will guarantee to them access to the best markets.

No doubt the greater portion of the grain will be shipped out, as heretofore, during the first two months after storage. Under the proposed rate, all grain shipped within thirty days will take a rate 10 cents per ton higher than previously charged. Grain remaining after thirty days will be assessed 15 cents additional per ton, which will carry the same to February 1st. According to testimony produced at the hearing, only 2 per cent of all grain stored in applicant's warehouses in 1914 remained long enough to take the season rate of 75 cents per ton; 18 per cent moved between the second and third months after storage, while 80 per cent was shipped under the lowest rate, including two months' storage. A crop of the same size handled under the proposed rates would, if moved in the same relative time, bring to applicant increased returns for the year, amounting to $262.75.

Under the general conditions affecting applicant's warehouse business, and more particularly for the reasons set forth herein, I am of the opinion and find as a fact that rates applied for to cover the storage of grain at Birds Landing warehouses are just and reasonable rates, and that the increase should be granted.

I recommend the following form of order:

ORDER.

Mrs. Lena Dinkelspiel, sole owner of the property known as Birds Landing warehouses, having applied to the Railroad Commission for an order authorizing an increase in warehouse rates for the storage of grain in said warehouses, and a public hearing having been held upon said application, and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted in so far as it conforms to the rates set out herein, and that

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applicant be permitted to charge and collect the following rates for the storage of grain, herein found to be just and reasonable:

Grain.

Storage, per season	$1 00 per ton.
Storage, to February 1st	75 per ton.
Storage, for 30 days	50 per ton.

It is further ordered that the collection of these rates is conditioned upon the performance of all service usually rendered in handling this commodity, such as receiving, weighing, piling, carrying in storage, necessary resacking or placing in proper condition for shipment and loading out.

Applicant is hereby authorized to place in effect as of June 1, 1915, a schedule embracing the foregoing rates and conditions, provided that the same shall be promptly filed with this Commission as the law provides.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

DECISION No. 2523.

IN THE MATTER OF THE APPLICATION OF PIERCE WAREHOUSE COMPANY FOR AN ORDER FIXING WAREHOUSE RATES.

Application No. 1686.

Decided June 25, 1915.

Applicant, operating a storage warehouse in the town of Suisun, charges at present for the storage of grain a rate of 25 cents per ton for first month, 50 cents per ton to January 1st and 75 cents per ton per season, and upon a showing that such rate is non-compensatory, it is authorized to establish a rate of $1.00 per ton per season, effective June 1, 1915, such rate to include all incidental expenses such as handling, weighing, piling, etc.

Wm. Pierce, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by Pierce Warehouse Company, a corporation, to increase warehouse rates at present assessed to cover the storage of grain in applicant's warehouses located on Suisun Slough in the town of Suisun, Solano County. This company was incorporated on

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August 14, 1912, with powers to engage in the general warehouse business as a public utility. On September 19, 1914, under Application No. 1317, this utility was granted authority by the Railroad Commission to issue 340 shares of its authorized capital stock of 1,000 shares at $100.00 per share, and reference is hereby made to the record in said application for such data as pertains to the corporation's purposes of organization, its financial condition and such other matters as are pertinent to the present application.

Rates filed with the Commission by this company and at present in effect are as follows:

Grain, Beans, Groceries, Etc.

Storage, first month	25 cents per ton
Storage, to January 1	50 cents per ton
Storage, per season (June 1 to May 31)	75 cents per ton

Hay.

Storage, per season	$1.00 per ton

Wool.

Storage, in lots of 1 to 5 bags, per season	25 cents per bag
Storage, in lots of 6 or more bags, per season	15 cents per bag

Potatoes and Onions.

Storage, per season	5 cents per sack

Furniture.

Storage, per season	$1 50 per ton

Applicant requests that these rates be advanced, in so far as they cover the storage of grain, to provide for a flat charge of $1.00 per ton per season, it being understood that the term "season" shall include service and storage from June 1st of any given year to May 31st of the year following.

Warehouse property covered by this application is admirably located for the purposes intended, being accessible to both rail and water transportation. There are four separate warehouses involved, three of which are at present used for hay storage. These three are of wood construction throughout and are provided with no special facilities other than the usual block and tackle equipment. Weighing is done over a typical yard scale located in a lot adjacent. The grain warehouse is built of corrugated iron with the exception of the side along and resting over Suisun Slough, which, for shipping convenience, has a board wall. This structure is new and has about 15,000 square feet of available floor space for the storage of grain, one half of which is now under lease to the Northern Electric Railway Company, which company has built a spur track into the warehouse to facilitate transportation. Ample facilities for weighing and handling grain in quantities likely to be offered have been provided at this warehouse.

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The dimensions of the four warehouses are as follows:

Grain warehouse	70 x 300 x 16 feet
Hay warehouse, No. 1	50 x 100 x 16 feet
Hay warehouse, No. 2	50 x 100 x 16 feet
Hay warehouse, No. 3	50 x 100 x 20 feet

A total valuation of $34,000.00 has been placed by applicant upon this property as a whole, including considerable lot acreage devoted more or less to warehouse purposes, the warehouse structures and facilities alone being given a value of $8,100.00. The water front upon which this property is located has been assigned a more or less intangible value of $23,900.00. While some of these values, even with warehouse advantages, could not possibly stand under a strict valuation for rate fixing purposes, on the other hand it is perfectly obvious that, considering the annual gross receipts shown by the testimony to have been taken in by this company since its organization, a rate based upon the lowest estimated value of the properties could not be met by the patrons of this utility. The rates authorized will, therefore, be intended rather as a general adjustment conforming as nearly as may be to the usual charges assessed by warehousemen similarly situated and handling the same commodities, than an effort to provide definite returns upon a particular investment. While this utility did not furnish financial statements showing the results of its activities since incorporation, it was stated that the gross annual income from grain storage would not exceed $300.00. A superintendent is employed to manage this property who, after deducting expenses, retains as compensation 75 per cent of the net receipts. The owner's returns would, under this showing, be practically negligible. It is clear that a warehouse can not be operated indefinitely in the face of an annual deficit, and applicant has indicated that steps would be taken to discontinue operations as a public utility should there be no way provided for better returns in the future.

The usual publicity was given to this hearing, and there was also mailed to each of applicant's patrons a personal notice advising him that it would be his right to be present and be heard in protest, or otherwise, should he so desire. Notwithstanding this publicity, no one appeared to oppose the application; and, in view of all the circumstances, this is taken as a significant fact tending in a way to substantiate applicant's contentions.

A representative of the Grain Trade Association of San Francisco was present to look after the interests of the grain buyers of that city, who are directly concerned with charges incidental to storage and transportation. So far from opposing the rate applied for, this representative recommended the same as tending to encourage a better class of service among warehousemen.

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It is the experience of the Commission that the patrons of a public utility are not unwilling to pay a fair rate for a good quality of service. A farmer does not want any unnecessary delays when delivering his products to the warehouse. He desires that safety and protection be furnished for his property, that no obstacles be placed between himself and the best markets and that upon his order his grain, etc., be promptly loaded out or shipped. For this service, honestly given, the Commission believes that growers are entirely willing to pay fair and reasonable rates.

If, under this application, the warehouse company is authorized to increase its rates, such authorization will extend to charges for the storage of grain only, and will be conditioned upon a high class of service of the kind by custom established, including all necessary resacking or otherwise placing grain in proper condition for safe shipment when loaded out. As a condition precedent to the collection of such rate as may be authorized under this application, a schedule embracing the same, together with all other rates now lawfully collected, should be promptly filed, as also should a copy of the contract of lease under which the Northern Electric Railway Company enjoys the use of a portion of applicant's warehouse at a specified monthly rental.

For the reasons set forth herein, and the further reason that general conditions surrounding this service suggest the fairness of applicant's request, I am of the opinion and find as a fact that this application, in so far as it conforms to the order herein submitted, should be granted, and that $1.00 per ton per season is a just and reasonable rate for the storage and incidental handling of grain in applicant's warehouses located in the town of Suisun. Since this is the rate already charged for the storage of hay, it will not be necessary to make the order in this application include that product.

I recommend the following form of order:

ORDER.

Pierce Warehouse Company, a corporation, having applied to the Railroad Commission for an order authorizing an increase in warehouse rates for the storage of grain at Suisun, California, and a public hearing having been held upon said application and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted, and that applicant be permitted to charge and collect the following rate for the storage of grain, herein found to be just and reasonable.

Grain.

Storage, per season (June 1 to May 31 following)_____ $1 00 per ton

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It is further ordered that the collection of this rate be and the same is conditioned upon the performance of all services usually rendered in handling this commodity; such as receiving, weighing, piling, carrying in storage, necessary resacking or placing in proper condition for shipment and loading out.

Applicant is hereby authorized to place in effect as of June 1, 1915, a schedule embracing the foregoing rate and conditions, provided the same shall be promptly filed with the Commission as the law provides.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

DECISION NO. 2524.

STEIGER TERRA COTTA AND POTTERY WORKS

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 596.

CALIFORNIA POTTERY COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 669.

N. CLARK AND SONS

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 672.

Decided June 25, 1915.

Complainants, operating factories manufacturing various clay products, heretofore paid a rate of $1.25 per ton on clay from different pits to their respective factories, which rate was reduced to 85 cents by an order of this Commission in Case No. 385. Complainants now petition the Commission to award them reparation, being the difference between the old and the new rates, on all shipments of clay made during the last three years, contending that as this Commission found the $1.25 rate to be unreasonable, they are entitled to the reparation asked for.

Held, After an exhaustive review of Supreme Court decisions in reparation matters and an analysis of the reparation clauses of the Interstate Commerce Act and the Public Utilities Act of California: That to be entitled to reparation, a shipper

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must show that he was actually damaged to the extent of the amount asked in reparation; that when a rate is found to be unjust and exorbitant and a lower rate established, shippers that have moved freight under the old rate are not necessarily entitled to a refund of the difference between the higher and the lower rate but only to such an amount as they have individually been damaged.

Held, That complainants herein have not shown that they have suffered damages under the old rate in effect on clay; complaints accordingly dismissed without prejudice.

Alfred J. Harwood, for Complainants.

George D. Squires, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On October 30, 1913, this Commission filed its opinion and order in Case No. 385, *San Francisco Chamber of Commerce* vs. *Southern Pacific Company* (3 Cal. R. R. Com. Decisions, 848). In its order in that case the Commission found to be unjust and unreasonable a rate of $1.25 per ton of 2,000 pounds charged by the defendant for the shipment of clay in carloads from Ione, Clarksona, Yaru, Carbondale, Lincoln, Clayton and Valley Springs to South San Francisco, East Oakland and Alameda (Pacific avenue). The Commission directed the defendant to put into effect a rate of 85 cents per ton of 2,000 pounds on clay in carload quantities of 60,000 pounds or more, from the points of origin to the points of destination above mentioned.

Steiger Terra Cotta and Pottery Works alleges in its complaint in Case No. 576, that it is engaged in the manufacture of pottery from clay and the making of clay products; that complainant has a factory located at South San Francisco; that during the last three years complainant has shipped to its factory some 666 carloads of clay over the line of the defendant from Clarksona, Yaru and Ione; that complainant paid therefor the rate of $1.25 per ton; that this Commission has found that a rate of 85 cents per ton is a just and reasonable rate for the shipment of carload lots of clay between said points. Complainant asks for an award of reparation in the sum of $10,645.27, together with interest thereon, this being the reparation alleged to be due on the shipments of clay above mentioned.

California Pottery Company, complainant in Case No. 669, alleges that it is engaged in the manufacture of pottery from clay and the making of clay products at a factory located in East Oakland; that during the past three years complainant has shipped to its factory some 283 cars of clay over defendant's line from Ione, Yaru, Clayton and Valley Springs. The complaint contains allegations similar to those in the complaint of Steiger Terra Cotta and Pottery Works, and asks for an award of reparation in the sum of $4,669.48 with interest.

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N. Clark and Sons, complainant in Case No. 672, alleges that it is engaged in the manufacture of pottery from clay and the making of clay products at its factory in Alameda (Pacific avenue); that during the past three years complainant has shipped to its factory some 595 cars of clay over defendant's line from Clarksona, Ione, Clayton and Lincoln. Complainant seeks reparation upon these shipments to the amount of $9,746.17 with interest.

These three cases were, by consent, consolidated for hearing, as the issues raised in each case are identical. In each case the defendant filed an answer denying the rates charged complainant were unjust and unreasonable, and also denying the jurisdiction of the Commission to award reparation.

Before considering the particular facts of this case I desire to discuss briefly the general question, whether a party who has paid to a carrier a rate subsequently found to be unreasonable is entitled by that fact alone, upon the filing of a proper complaint, to an award of reparation from this Commission, or whether such party must, in addition, make a showing that he has not only paid the unreasonable rate, but that he has been injured by the payment of such rate. This question has arisen from time to time in reparation cases before this Commission, and I believe it important to have a definite ruling announced thereon. In considering this question I shall refer, first, to section 8 of the Interstate Commerce Act empowering the Interstate Commerce Commission to award reparation, and to recent decisions of the United States Supreme Court interpreting that provision of the Interstate Commerce Act. I shall then consider the provisions of the Public Utilities Act of this State, and shall endeavor to find the proper rule which this Commission should follow in seeking awards of reparation.

Section 8 of the Interstate Commerce Act provides as follows:

> "That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

It will be noted this section provides that "*the common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained* in consequence of any such violation of the provisions of this act." It is important to notice this provision in view of the fact that its terms are different from the reparation provisions

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of the Public Utilities Act of this State, to which reference will hereafter be made.

Section 8 of the Interstate Commerce Act was recently considered by the United States Supreme Court in *Pennsylvania R. Co.* vs. *International Coal Mining Co.*, 230 U. S. 184. In that case the International Coal Mining Company sought to recover from the Pennsylvania Railroad Company certain sums which the coal company claimed represented the damage suffered by it because of rebates granted by the railroad company to competitors of the coal company. In discussing the amount of damages to which the coal company was entitled, Mr. Justice Lamar refers, on page 203 of the Reporter, to section 8 of the Interstate Commerce Act as follows:

> "The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. *Those damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved, they could not be recovered.* Whatever they were, they could be recovered, because section 8 expressly declares that wherever the carrier did an act prohibited, or failed to do any act required, it should be '*liable to the person . . . injured thereby for the full amount of damages sustained in consequence of any such violation . . . together with a reasonable attorneys' fee.*' In view of this language it becomes necessary to inquire what the evidence shows was the injury inflicted or the damage sustained by the plaintiff in 1901 in consequence of paying rates in 1901 on contract coal sold in 1899."

Again, on page 204 of the Reporter, Mr. Justice Lamar points out that in order to sustain a claim for reparation under section 8 of the Interstate Commerce Act, complainant must establish both the fact of the injury and the amount of damage, and states:

> "The statute gives a right of action for *damages* to the *injured* party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. *It is elementary that in a suit at law both the fact and the amount of the damage must be proved.* And although the plaintiff insists that in all cases like this the fact and the amount of the pecuniary loss is matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience, as will appear by considering several usual and every-day instances suggested by testimony in this record."

Mr. Justice Lamar then emphasizes his ruling by the following pertinent illustrations:

> "If plaintiff and one of the favored companies had both shipped coal to the same market on the same day, the rebate on contract coal may have given an advantage which may have

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prevented the plaintiff from selling, may have directly caused it expense, or may have diminished or totally destroyed its profits. The plaintiff, under the present statute in any such case being then entitled to recover the full damages sustained;

"But the plaintiff may have sold at the usual profit all or a part of its 40,000 tons at the regular market price, the purchaser, on his own account, paying freight to the point of delivery. *In that event not the shipper, but the purchaser, who paid the freight, would have been the person injured, if any damage resulted from giving rebate.* To say that seller and buyer, shipper and consignee, could both recover, would mean that damages had been awarded to two where only one had suffered;

"Or, to take another example, a favored dealer may have shipped 10,000 tons of coal to the open New York market, receiving thereon a rebate of 35 cents a ton, or $3,500.00. The plaintiff at the same time may have shipped 20,000 tons and sold the same at the regular market price. Under the rule contended for it would then be entitled to 35 cents a ton on 20,000 tons, or $7,000.00 as damages. Such a verdict, instead of compensating it for losses sustained, would have given to the plaintiff a profit on the carrier's crime in paying a rebate of $3,500.00, and would have made it an advantage to it instead of an injury for the carrier to violate the law."

In conclusion, Mr. Justice Lamar states on page 207 of the Reporter:

"In view of the express provisions of section 8 of the act to regulate commerce, it was error to refuse to charge that 'to entitle the plaintiff to recover, the jury must be satisfied that it sustained some loss or injury due to the fact that the defendant was carrying at the same time, at lower rates, coal shipped by other shippers.' The judgment of the Circuit Court of Appeals is reversed, and the case remanded to the District Court with directions to grant a new trial. Reversed."

This decision of the United States Supreme Court clearly announces that under the broad provisions of section 8 of the Interstate Commerce Act a party is entitled to an award of reparation only when he has shown, (1) he has been injured, and, (2) the amount of the damage.

The rule announced by the United States Supreme Court in the *International Coal Mining Company* case was again announced with reference to claims for reparation because the collection of discriminatory and unreasonable rates in *Mecker* vs. *Lehigh Valley R. Co.*, 9 U. S. Adv. Ops., 1914, p. 328, decided February 23, 1915. The Interstate Commerce Commission had made an order containing two awards of reparation to plaintiff in connection with shipments of coal over the defendant railroad. One of these awards was made on the ground that plaintiff was damaged by reason of being charged rates which were unjustly discriminatory against him; the other award was made on the ground that plaintiff was damaged by reason of being charged unreasonably high rates. In upholding the order of the Commission

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with a slight modification, Mr. Justice Van Devanter discusses the measure of damage in cases of this kind, and states on page 335 of the Reporter:

> "The Commission was authorized and required by section 8 of the act to regulate commerce to award '*the full amount of damages sustained,' and that, of course, was to be determined from the evidence.* If it showed that the damages correspond to the rebate in one instance and to the overcharge in the other, the claimant was entitled to an award upon that basis. The case of *Pennsylvania R. Co.* vs. *International Coal Mining Co.,* 230 U. S. 184; 57 L. ed. 1446; 33 Sup. Ct. Rep. 893, is cited as holding otherwise, but it does not do so. There a shipper, without proving that he sustained any damages, sought to recover from a carrier for giving a rebate to another shipper, and this court, referring to section 8, said (p. 203): 'The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. Those damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved, they could not be recovered. Whatever they were they could be recovered.' There is nothing in either report of the Commission which is in conflict with what was said in that case. On the contrary, the plain import of the findings is that the amounts awarded represent the claimant's actual pecuniary loss; and, in view of the recital that the findings were based upon the evidence adduced, it must be presumed, there being no showing to the contrary, that they were justified by it."

It must be clear from these decisions that before a person is entitled to an award of reparation by the Interstate Commerce Commission he must show first that he, himself, has been injured, and must also show the actual amount of damage resulting from that injury. It is, of course, conceivable that a person who has paid an unreasonably high rate has not been injured thereby. He may have paid the rate as an agent for the shipper, who has reimbursed him for the full amount of the rate paid. The shipper who has paid an unreasonable rate may, himself, have been reimbursed therefor by the consignee or by the person to whom the goods shipped were sold. The collection of an unreasonable rate does not necessarily mean that the one who paid that unreasonable rate has been injured. Neither does it follow that if a person has been injured by the payment of an unreasonable rate the measure of damages is necessarily the amount in which the rate is found to be unreasonable. The same conclusion follows with reference to a claim of damages for the collection of a rate which is alleged to be unjustly discriminatory. It is not enough merely to show that the rate charged is discriminatory or unreasonable. In addition, two elements must be shown: first, an injury to the party claiming the reparation, and, secondly, the amount of the damage resulting from such injury.

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The power of this Commission to award reparation is not expressed in the same terms as section 8 of the Interstate Commerce Act. Section 21, article XII of the Constitution of California provides:

> "*Discrimination in charges for transportation forbidden.*
> Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates; provided, however, that upon application to the Railroad Commission provided for in this constitution such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul. The Railroad Commission shall have power to authorize the issuance of excursion and commutation tickets at special rates. *Nothing herein contained shall be construed to prevent the Railroad Commission from ordering and compelling any railroad or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory, provided no discrimination will result from such reparation.*"

Section 71(*a*) of the Public Utilities Act provides as follows:

> "Sec. 71(*a*). When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; *provided,* no discrimination will result from such reparation."

The language of section 71(*a*) of the Public Utilities Act is different from that of section 8 of the Interstate Commerce Act. Nevertheless, the purpose of these two sections is obviously the same. Accordingly, the decisions of the United States Supreme Court interpreting section 8 of the Interstate Commerce Act, are properly a controlling authority in the interpretation of section 71 (*a*) of the Public Utilities Act. As already pointed out, the United States Supreme Court in the *Inter-*

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national Coal Mining Company case and in the *Mecker* case, has announced the rule, with reference to the Interstate Commerce Act, that a person seeking reparation from a carrier must show, not only that he has paid an unreasonable or discriminatory rate, but also, that he has been damaged by the collection of such a rate. In like manner a person seeking reparation under section 71 (*a*) of the Public Utilities Act should be required to show, not only that he has paid an unreasonable or discriminatory rate, but that the payment of such a rate has resulted in damage to him. In fact, the word "reparation" has been construed to mean compensation for an injury suffered. (*Arkansas & L. Ry. Co.* vs. *Harris,* 62 Ark. 452, 36 S. W. 186; 34 Cyc. 1340.) I do not here hold that the Commission has the power to award reparation in any case beyond the amount to which the rate paid is found to be unreasonable or discriminatory. It is not necessary to pass on that question. I do hold, however, that before any award of reparation is made, injury to the one seeking reparation must be shown. The Commission has heretofore indicated its adherence to this rule in Case No. 392, *City Lumber Company* vs. *San Pedro, Los Angeles and Salt Lake Railroad Company,* 3 Cal. R. R. Com. Decisions 109, 113, and Case No. 382, *Carnegie Brick and Pottery Company* vs. *Western Pacific Railway Company,* decided February 12, 1915.

The rule I have here announced also, in my opinion, entirely conforms to the proviso in section 71 (*a*) of the Public Utilities Act that the Commission shall only award reparation "provided no discrimination will result from such reparation." In fact, that proviso seems to contemplate such a rule as I have announced. For instance, if the Commission, upon the complaint of "A," should find a rate charged "A" to be unreasonable or discriminatory, and because of that fact alone should award reparation to "A," it might well be that discrimination would result to "B" and "C," who also had shipped under these rates but who had not sought reparation. It would be practically impossible for the Commission to award reparation in any case on such a theory without the award amounting to a discrimination unless the Commission had before it all the parties who had shipped under the rate questioned. On the other hand, if the Commission adheres to the rule that reparation will be awarded only when the fact of injury is shown and when the amount of damage is proved, it can not justly be claimed that discrimination results to any other shipper. While there will, of course, be other shippers who have shipped goods under the rates questioned, certain of these shippers will, unquestionably, have been reimbursed for their loss, by one of the methods discussed in connection with the *International Coal Mining Company* case, *supra,* and will be unable to establish the fact of injury. Clearly, an award of

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reparation to one who has been injured can not amount to a discrimination against those who have not been injured. Neither can any discrimination arise because, from among those who have been injured and can establish damages, only a few seek and obtain awards of reparation. The rule which I have announced proceeds on the theory that reparation is for a private injury. Each individual case must, therefore, be considered by itself. If "A," who has been injured, does not seek redress he can not be heard to complain of discrimination because "B," who has also suffered a private injury, seeks and obtains redress. On the theory that an award of reparation from this Commission is redress for a private injury, the proviso in section 71(*a*) of the Public Utilities Act, that reparation shall be awarded only in the event "that no discrimination will result from such reparation," is entirely satisfied.

Proceeding in accordance with the rule herein announced, I desire briefly to consider the evidence with reference to the injury and the damage suffered by the complainants in these proceedings. Steiger Terra Cotta and Pottery Works, through its president, testified that it was operating at a loss; that the prices at which, through competition, it was compelled to sell its products, did not return sufficient to cover the cost of manufacturing the goods and managing the business. But it is significant that other factories engaged in the same business as this complainant are operating in the same locality at a profit. It may well be, therefore, that the loss suffered by this complainant is not due to the collection by the carriers of an unreasonable rate for the transportation of clay. The loss on complainant's business may be due to the more advantageous location of competing plants, or to the ability of such competitors to manufacture or market their wares more cheaply than complainant, because of more favorable labor conditions, or because of more favorable rates on the manufactured products from the plant to the markets where the products are sold. While complainant is operating its business at a loss, there is nothing in the record to show that the complainant has not been reimbursed at least for the unreasonable rate collected on the clay shipped to its factory. There is nothing to show that the loss suffered by complainant in its business is due to the collection of the unreasonable rate, and not to entirely distinct causes; in fact, in so far as the record contains enlightening testimony upon this question it shows that the loss suffered by complainant is due to causes entirely distinct from the collection by the carriers of an unreasonable rate for the transportation of clay. I must conclude that the complainant has not established its right to reparation in accordance with the rule above outlined. I accordingly recommend that the complaint of Steiger Terra Cotta and Pottery Works be dismissed.

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Considering now the complaint of N. Clark & Sons, this company, through its secretary, testified that it generally succeeded in including the clay transportation costs in the price which it realized from the sale of the manufactured product. This company is doing business at a profit. There is nothing in the record to show that this company has not been reimbursed for the unreasonable rates charged for the transportation of clay. In fact, the secretary of this company testified that the reduction in the transportation rate on clay from $1.25 to 85 cents had practically no effect on the business of the company. This clearly indicates to my mind that there has been no damage to this complainant from the collection of the unreasonable rate. I must conclude, therefore, that complainant, N. Clark & Sons, has not satisfied the requirements of the rule above announced, and I accordingly recommend that the complaint of this company be dismissed.

With reference to the complaint of California Pottery Company, no testimony at all was offered in support of this complaint, either as to the fact of an injury resulting to complainant from the collection of an unjust rate, or as to the extent of the damage resulting from such injury. The record is barren of testimony on those points, and I must accordingly recommend that this complaint be dismissed.

I submit the following form of order:

ORDER.

The above entitled cases having come on regularly for hearing, and the Commission being duly advised in the premises,

It is hereby ordered that the complaint in each of the above entitled cases be, and the same is hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1915.

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Decision No. 2525.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER FIXING RATES TO BE CHARGED AND COLLECTED FOR WATER FURNISHED AND TO BE FURNISHED BY THEM, AND SERVICE RENDERED BY THEM IN FURNISHING WATER AND IN FURNISHING, CARRYING AND CONVEYING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 1231.

Decided June 26, 1915.

Applicants apply for permission to increase rates for water and to establish certain new rules and regulations, and subsequent to the filing of such application, applicants having entered into a contract agreeing to sell their system at a price to be fixed by the Commission, and the proposed purchaser being a quasi-public institution over which the Commission will have no jurisdiction, application held in abeyance till November 15, 1915, at which time if applicants still own the system and there is no prospect of an immediate purchase, the matter will again be taken up to a final determination.

Sweet, Stearns & Forward, by *F. W. Stearns, S. B. Robinson,* and *A. E. Chandler*, for James A. Murray, Ed Fletcher, William G. Henshaw, and Cuyamaca Water Company.

D. G. Gordon and *Sumner & May*, for consumers on the flume line.

Haines & Haines, for Lemon Grove Mutual Water Company and Fairmont Water Company.

D. L. Wood, for Granada Park.

F. G. Blood, for Chamber of Commerce of East San Diego.

C. R. King, for Normal Heights Water Consumers.

Titus, Creed, Jones & Dall, for C. A. Hooper and Company.

Report of the Commission.

Thelen, *Commissioner.*

This is an application for authority to increase the rates charged for water by James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, as a public utility in San Diego County, and also for an order authorizing the establishment of certain new rules and regulations proposed by applicants.

Public hearings in this proceeding were held in the city of San Diego on February 15, 16, 17, 18, 19 and 20, and April 12, 13, 14, 15, 16 and 17, 1915, at the same time and in conjunction with the hearings which were held in Application No. 1432, Application No. 1482, Supplemental

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Application No. 118, Case No. 716 and Case No. 724, in all of which proceedings decisions are being rendered today. It was stipulated and agreed that the evidence received in each of these proceedings might be considered in each of the other proceedings. It was also stipulated that the evidence heretofore taken in Application No. 118, being a former application of Murray and Fletcher for an order authorizing an increase in rates, decided on March 28, 1913, might be considered in evidence in these proceedings.

The petition in this proceeding was filed on July 10, 1914. Thereafter on November 17, 1914, the applicants herein entered into a contract to sell their entire water system, except 601 acres in the vicinity of Cuyamaca Lake, to La Mesa, Lemon Grove and Spring Valley Irrigation District at a price to be determined by the Railroad Commission. A copy of this contract is attached to the petition in Application No. 1432. The contract provides in part that all the parties shall join in an application to the Railroad Commission to establish the price at which the property shall be sold by the Cuyamaca Water Company, hereinafter referred to as the Cuyamaca Company, and purchased by the irrigation district, and the parties agree, the one that it will sell and the other that it will purchase the property at the price thus to be determined. The parties further agree "that the decision of the said Commission shall be final and binding upon both parties thereto and that neither party shall have a right to appeal therefrom or to have a review thereof."

The decision on Application No. 1432 is being rendered today. In view of the willingness of the Cuyamaca Company to sell and of the irrigation district to buy the property and of the provision in the contract that neither party will appeal from the decision of the Railroad Commission or ask for a review thereof, the transfer of the property to the irrigation district should be consummated within a few months. When this transfer has been consummated, the property will belong to a quasi-public district and under the law as it now stands the Railroad Commission will lose jurisdiction over the rates, rules and regulations of this water system, except as to such consumers as may be located outside the limits of the irrigation district. The irrigation district will have the power to establish its own rates, rules and regulations, except as indicated. In view of the impending transfer of the property to the irrigation district, it would seem ill advised for the Railroad Commission at the present time to establish an entirely new system of rates and to authorize the important changes in rules and regulations proposed by the applicants herein.

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The order rendered on March 28, 1913, in Application No. 118, provides in part as follows:

> "It is hereby ordered that the applicants herein begin immediately the construction of a flume in lieu of the one now used, which flume shall be of a character satisfactory to this Commission after the plans therefor have been submitted to it, but shall in any event be a closed flume or conduit of suitable material to be determined on the submission of the plans to this Commission.
>
> "It is further ordered that within thirty days from the date of this order that the applicants file with this Commission plans and specifications of said flume.
>
> "It is further ordered that said applicants take immediate steps to increase the available supply of water so the same may be increased over the present available supply at least 33⅓ per cent. While the Commission does not at the present prescribe details with reference thereto it reserves and does not finally determine this question, and in the event that these applicants do not within a reasonable time in the opinion of the Commission begin the construction of other facilities than the ones specifically ordered herein, this particular matter being held open for decision and for the further submission of evidence, will again be considered by this Commission after due notice to the applicants and the parties hereto as required by law."

After authorizing the charge of materially increased rates, the order concludes as follows:

> "It is further ordered that each and every portion of this order is made in contemplation of the performance by the applicants of every other portion thereof, and that this order is not to be considered as separable, and that no rates other than the ones that are now being charged by these applicants may be charged or collected, until said applicants have complied with all the provisions of this order or shall satisfy this Commission that they are in good faith proceeding to comply therewith."

The applicants have not constructed a new flume in lieu of the one being used on March 28, 1913, but have lined the existing flume with rubberoid roofing paper. While this improvement may enable the flume to carry water a number of years longer, the evidence in the present proceeding shows that before very long a substitute will have to be built for the entire flume, as contemplated in the Commission's order. The Cuyamaca Company has been charging the increased rates set forth in the Commission's order in said Application No. 118, although the company has not begun the construction of a flume in lieu of the one now used.

With reference to the increase of the available supply of water so that the same may be increased over the supply available on March 28, 1913, at least 33⅓ per cent, the Cuyamaca Company now claims that

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by reason of the lining of the flume and the acquisition of the El Monte pumping plant, which was operated for many years by the San Diego Flume Company, the company has increased its available water supply at least by the 33⅓ per cent referred to in this Commission's order in Application No. 118. These matters are fully discussed in this Commission's opinion this day rendered in Application No. 1432, to which reference is hereby made. Notwithstanding the claim of the Cuyamaca Company that it has increased its available supply of water so as to comply with this portion of the Commission's order in Application No. 118, the fact remains that neither in 1913 nor in 1914 was the company able to supply the full amount of water required by its consumers, as is set forth in the opinion in Application No. 1432. In view of these facts, it would seem advisable to wait until the present irrigation season has elapsed so that it can be determined whether the claims presented by the Cuyamaca Company in their exhibits and tabulations will work out in practice.

Furthermore, the Cuyamaca Company is at the present time selling a large amount of surplus flood water to the city of San Diego and is thereby materially enhancing its revenues over those received in 1914. What amount of revenue the company will receive from this source and the extent to which this source of revenue may be looked to for the future are at present problematical.

Applicants have urged, as one reason for an increase in rates, that they have been unable since they acquired this water system on June 1, 1910, to earn enough money to pay even maintenance and operating expenses, to say nothing of interest on the moneys invested by them. In reply to this contention, it seems proper to draw attention to the fact that the sale price for this property which is being established today in Application No. 1432 and the price at which the city of San Diego may acquire the property by condemnation, as specified in the decision this day being rendered in Application No. 1482 is more than large enough to return to the applicants herein all the money which they have invested in the property beginning with the initial purchase price on June 1, 1910, together with interest on all these moneys at the rate of 8 per cent per annum to June 30, 1915, together with such deficits as have accrued over reasonable maintenance and operating expenses with interest on such deficits from the time they have accrued until June 30, 1915. Accordingly the applicants will be entirely reimbursed for their investments and their losses in the past. With reference to present conditions, it will suffice to draw attention to the fact that applicants report that during the months of January, February and March, 1915, they have earned $3,814.00 in excess of maintenance and operating expenses. This report does not show whether the applicants have made the reductions in maintenance and operating

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expenses which were shown to be advisable at the hearings herein. If such reductions have not been made, the actual earnings over maintenance and operating expenses during these three months would be materially in excess of the sum of $3,814.00. It appears further that the sales of surplus waters to the city of San Diego have continued up to today and that handsome revenues in excess of those usually derived at this period of the year are being derived from this source.

In view of all these facts, I consider it inadvisable and unnecessary to render a decision at the present time upon the petition herein and the complaints connected therewith presented at the hearing.

If at the end of the present irrigating season, say November 15, 1915, applicants are still the owners of their water system without reasonable prospect of sale in the near future, and if during this irrigating season they have rendered full service to their consumers, they may by supplemental petition ask that this Commission resume the consideration of the petition herein, whereupon, after supplemental hearing, the Commission will render such order as may seem appropriate in the premises.

I submit the following form of order:

ORDER.

Public hearings having been held in the above entitled proceeding, and the Railroad Commission finding that further consideration should not be given to this proceeding until November 15, 1915, if at all,

It is hereby ordered that further consideration of the above entitled proceeding be and the same is hereby deferred until November 15, 1915, at which time the applicants herein, if they are still the owners of their water system without prospect of sale in the immediate future, and if they have rendered full service to their customers during the irrigating season of 1915, may by supplemental petition ask the Railroad Commission to resume its consideration of the above entitled matter, whereupon, after supplemental hearing, the Railroad Commission will render such further order as may seem proper in the premises.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

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DECISION NO. 2526.

D. G. GORDON

vs.

JAMES A. MURRAY AND ED FLETCHER.

Case No. 724.

Decided June 26, 1915.

Complainant, an irrigationist entitled to water from the system of respondents, petitions the Commission to direct respondents to construct additional reservoir facilities and also to investigate respondent's pumping plants and ascertain as to whether they are able to give efficient service, and the matters complained of having been taken care of in another decision this day rendered, complaint dismissed.

D. G. Gordon, in propria persona and *Sumner & May,* for Complainant.

Sweet, Stearns & Forward and *A. E. Chandler,* for Defendants.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The complainant herein is an orange and lemon grower residing at Bostonia, San Diego County, and purchasing water from the irrigation system owned by the defendants and operated under the name of Cuyamaca Water Company, hereinafter referred to as the Cuyamaca company. The applicant asks that this Commission require defendants to complete within a definite time in the near future one or more designated reservoirs of sufficient capacity to insure a full supply of water to complainant and others having a right to water from said system, in years of average rainfall; that the Commission investigate the various pumping stations of the defendants and make such order with respect to the utilization thereof as may seem fair to the consumers taking water from the Cuyamaca company's flume; that the Commission ascertain under what conditions and with what limitations and restrictions the defendants may properly sell water from their system to the city of San Diego and make such order thereon as may seem just and reasonable; that the Commission investigate the rules and practices of the defendants in the matter of the supply of water to new domestic consumers and the withholding of water from irrigation consumers for the purposes of insuring a full supply to the domestic consumers, and thereupon make such order as may seem proper in the premises; and that the Commission will definitely recognize the right of irrigation consumers under the water system of defendants to a full supply of water in years of average rainfall and to a proration with all

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consumers at such times as there may not be sufficient water available in the system for the full supply to all consumers.

The hearing in this proceeding was consolidated with the hearing in the other so-called Cuyamaca cases, being Application No. 1231, Application No. 1432, Application No. 1482, Supplemental Petition in Application No. 118 and Case No. 716, in all of which proceedings decisions are this day being rendered.

The complainant in the present proceeding presented to the Railroad Commission at the hearings in these various proceedings material evidence bearing on the question of the rates, rules and regulations of the Cuyamaca company, which evidence will be carefully considered by the Railroad Commission if it hereafter becomes necessary to resume consideration of the application of the defendants herein in Application No. 1231 for an increase in rates and for the establishment of certain new rules and regulations.

The fear of the complainant that his right to the continued supply of water from the system of the defendants for the irrigation of his lands may be interfered with will undoubtedly be allayed upon the reading of the decision this day being rendered in Application No. 1432, in which careful consideration is given to the position of the complainant and other irrigationists under this system.

In his brief herein, the complainant takes the following position with reference to a portion of the relief herein asked:

> "Complainant recognizes the difficulty of deciding what construction work should be done on this system pending the settlement of the question of future ownership of it, and therefore does not urge that construction work be ordered at this time; but unless the question of ownership be definitely settled within the next six months, we ask that the Commission decide what construction work ought to be done and insist on having it done promptly, for there can be no doubt that there is urgent need of all the water that can be developed for this system, much of it for uses that can afford to pay much higher rates than farming irrigation can afford to pay."
>
> "For reasons above stated complainant does not urge that any action be taken at this time regarding furnishing water to the city of San Diego."

I believe that this disposes of all the matters referred to in the complaint which can be disposed of at the present time. If complainant desires to have further action taken on any of the matters referred to in his complaint, he may bring these matters to the attention of the Commission if it should hereafter become necessary to resume the consideration of the petition of the Cuyamaca company for an increase in rates, presented in Application No. 1231.

For the reasons herein stated, I recommend that this complaint be dismissed without prejudice.

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I submit the following form of order:

ORDER.

Public hearings having been held in the above entitled proceeding, and it appearing that there is no need for further consideration of this proceeding,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

DECISION No. 2527.

IN THE MATTER OF THE APPLICATION OF CITY OF SAN DIEGO FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO JAMES A. MURRAY AND ED FLETCHER AND WILLIAM G. HENSHAW, COPARTNERS DOING A PUBLIC UTILITY WATER BUSINESS UNDER THE FIRM NAME AND STYLE OF CUYAMACA WATER COMPANY FOR THEIR LANDS, PROPERTY AND RIGHTS.

Application No. 1482.

Decided June 26, 1915.

City of San Diego desiring to acquire the water properties known as the Cuyamaca Water System, applies to the Commission to fix the just compensation to be paid therefor: (1) For the entire properties as described in applicant's Exhibit No. 1 with a separate valuation of water rights and appropriations, as the city claims a prior title thereto; (2) To such portions of the water system as are described in applicant's Exhibit No. 2, and as a detailed review of the evidence pertinent hereto was made in the decision rendered this day on Application No. 1432, bing application of La Mesa, Lemon Grove and Spring Valley Irrigation District for a valuation of these properties, which application was heard in connection with the present proceeding, the final determinations only are given herein:

Findings of Fact: That the just and reasonable price to be paid by the City of San Diego for the entire properties as listed in Exhibit No. 1 is the sum of $745,000.00; for that portion of the properties listed in Exhibit No. 2, the sum of $644,669.00, with an addition as severance damages of $32,966.12, making a total of $677,636.12.

Held, As regards applicant's request for a separate determination of the value of certain intangibles: That such items can be considered only as enhancing the value of the tangible property and no separate value can be affixed thereto.

T. B. Cosgrove, city attorney, for City of San Diego.

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Sweet, Sterns & Forward, by *Frederick W. Stearns, S. B. Robinson* and *A. E. Chandler*, for James A. Murray, Ed Fletcher, William G. Henshaw and Cuyamaca Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding to fix and determine the just compensation to be paid by the City of San Diego, an incorporated city, for the lands, property and rights of James A. Murray, Ed Fletcher and William G. Henshaw, copartners engaged under the firm name and style of Cuyamaca Water Company (hereinafter referred to as Cuyamaca company) in the business of selling water for municipal, domestic and irrigation purposes in San Diego County. This proceeding is brought under the provisions of section 47 of the Public Utilities Act. This section provides in part that any incorporated city or town may file with the Railroad Commission a petition setting forth the intention of such incorporated city or town to acquire under eminent domain proceedings, or otherwise, any existing public utility, and the lands, property and rights of any character whatsoever connected with such existing public utility, or any part or portion thereof; that said petition shall give a full and complete description of the property which it is intended to acquire; that the Railroad Commission shall thereupon proceed to fix and determine the just compensation that shall be paid to the owner of the public utility for the lands, property and rights thereof, or any part or portion thereof, in accordance with the provisions of section 70 of the Public Utilities Act; that the compensation fixed by the Railroad Commission in such proceeding shall be conclusive upon any court in which a proceeding for condemnation may thereafter be brought; that the Railroad Commission's findings shall be subject to review by the Supreme Court of this State in the same manner and within the same time as other orders and decisions of the Railroad Commission; and that if the Supreme Court shall decide that in any manner the Railroad Commission has not lawfully pursued its power, the court shall make its finding and refer the matter back to the Railroad Commission for correction or further action.

The procedure to be followed in such proceeding is set forth in section 70 of the Public Utilities Act.

The City of San Diego's petition herein alleges in part that the applicant is a municipal corporation operating under a freeholders' charter; that it is the intention of the City of San Diego to acquire under eminent domain proceedings certain lands, property and rights of an existing public utility, being an existing water system known as the Cuyamaca Water System, now operated and conducted for the purpose of impound-

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ing, conserving and distributing water for municipal, domestic and irrigation purposes, which said public utility and the lands, property and rights connected therewith are located in San Diego County and belong to and are owned and controlled by James A. Murray, Ed Fletcher and William G. Henshaw; that on January 4, 1915, the common council of the city of San Diego adopted Ordinance No. 5977 declaring that the public interest, convenience and necessity of the City of San Diego and of the inhabitants thereof required the acquisition, construction and completion of the properties of the Cuyamaca company, as described in the ordinance, and declaring the intention of the City of San Diego to acquire under eminent domain proceedings such property and directing the city attorney to commence an action in the Superior Court of San Diego County for the purpose of condemning and acquiring said property, a copy of which ordinance is attached to the petition and marked Exhibit "A"; that attached to the petition and marked Exhibit "B" is a schedule of the lands, property and rights of the Cuyamaca Company which the City of San Diego intends to acquire by eminent domain proceedings and for which the City of San Diego asks the Railroad Commission to fix and determine the just compensation to be paid by the City of San Diego; that attached to the petition and marked Exhibit "C" is a schedule of a portion of the lands, property and rights of the Cuyamaca company which portion of said lands, property and rights the City of San Diego desires to acquire by eminent domain proceedings and for which portion of said lands, property and rights the City of San Diego asks the Railroad Commission to fix and determine the just compensation to be paid by the City of San Diego, in case it shall be determined by the courts that the City of San Diego has not the power to acquire title to the entire property described in Exhibit "B" attached to the petition; that the City of San Diego as the successor to the ancient Mexican Pueblo of San Diego claims a prior and paramount right to the use for municipal purposes of the waters of the San Diego River and its tributaries, and that as to the water rights and water appropriations upon the San Diego River and its tributaries, listed in Exhibits "B" and "C" attached to the petition, the City of San Diego disputes the right and title of James A. Murray, Ed Fletcher and William G. Henshaw; and that it is probable that an action will shortly be commenced by the City of San Diego in the courts of competent jurisdiction to determine the rights of the City of San Diego in the waters of the San Diego River and that it would be desirable to have the Railroad Commission, in the present proceeding, state separately the value of the water rights and appropriations listed in said exhibits. The City of San Diego asks the Railroad Commission to fix and determine the just compensation to be paid by the City of San Diego for the lands, property and rights of the Cuyamaca company,

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as described in Exhibit "B" attached to the petition herein, and for that portion of the lands, property and rights which is described in Exhibit "C" attached to the petition herein and for such other and further relief as to the Railroad Commission may seem just and equitable.

Exhibit "A," attached to the petition herein, being a copy of Ordinance No. 5977 of the common council of the City of San Diego, contains exactly the same description of the property of the Cuyamaca company as is attached to the contract dated November 17, 1914, between James A. Murray and Ed Fletcher, copartners doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation District, a copy of which contract is attached to the petition in Application No. 1432, being the joint application of Murray and Fletcher and the irrigation district for an order fixing and determining the price to be paid by the irrigation district to the Cuyamaca company for its lands, property and rights and authorizing the Cuyamaca company to sell said lands, property and right to the irrigation district at such price. Reference is hereby made to the opinion and order this day rendered in said Application No. 1432.

Exhibit "B," attached to the petition herein, contains the same property descriptions as are described in said Ordinance No. 5977 and in the contract of November 17, 1914, between Murray and Fletcher and the irrigation district.

Exhibit "C," attached to the petition herein, contains a description of the portion of the lands, property and rights of the Cuyamaca company hereinbefore referred to and describes the same property as that which appears in Exhibit "B" except that the following omissions are made:

1. From the first schedule, describing real property other than easements, Exhibit "C" omits the following parcels of land:

(*a*) Poverty Gulch reservoir site.
(*b*) Webster reservoir site.
(*c*) Park reservoir site, also known as Miles No. 1 reservoir site.

2. From the second schedule, describing rights of way, federal rights granted and pending, flowage rights and riparian rights, the following items are omitted:

(*a*) Item No. 1.—Permit issued by United States Department of Agriculture, Forest Service, for a canal upon Boulder Creek, dated July 2, 1914.

(*b*) Item No. 2.—Application to United States Department of Agriculture, Forest Service, for final power permit on Boulder

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Creek, filed June 6, 1914—temporary permit to proceed with construction issued July 3, 1914, and final stipulation signed August 3, 1914.

(*c*) Item No. 3.—Contract to occupy lands and right of way for flume within the El Capitan Indian Reservation with United States Department of the Interior, originally made with the San Diego Flume Company, as recorded in the office of the Commissioner of Indian Affairs at Washington, D. C., as per letter from Department of Interior to Commissioner of Indian Affairs, dated September 16, 1892.

(*d*) Item No. 4.—Amended right of way for concrete pipe line at Sand Creek over land in the El Capitan Indian Reservation, approved by United States Indian Service June 25, 1913, as per departmental letter of July 29, 1913.

(*e*) Item No. 5—Amended right of way for steel pipe line at South Fork canyon over the El Capitan Indian reservation, granted in 1912.

(*f*) Item No. 6—Application for lands for reservoir purposes and easements for Conejos reservoir, pending, filed with the United States Department of the Interior in May, 1912, stipulations for a payment of $2,600.00 for lands to the Indian bureau having been signed in 1914.

(*g*) Item No. 7—Permit for the use of public lands for reservoir purposes in Poverty Gulch reservoir site, July 26, 1913, being approximately 40 acres in the southwest quarter of the southeast quarter and the southeast quarter of the northeast quarter of section 3, township 15 south, range 3 east, S.B.M.

(*h*) Item No. 8—Permit to occupy lands within the El Capitan Indian Reservation for pumping purposes, granted by United States Department of the Interior, dated September 12, 1913.

(*i*) Item No. 11—A general right of way for pipe lines through all lots in La Mesa colony.

3. From the third schedule, being a list of physical structures and improvements, the following items are omitted:

(*a*) The city of El Cajon's distributing system, partly installed and partly under construction.

(*b*) The Grossmont tract system, consisting of a reservoir in lot No. 449 in Grossmont tract, subdivision No. 3, and a reservoir in lot No. 21 and a reservoir near lot No. 75 of Grossmont tract, subdivision No. 1, together with all pipe lines connecting these reservoirs and other distributing lines laid upon the private ways

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within these subdivisions up to and including meters of the consumers and the pipe line known as the Helix pipe line.

(*c*) The water system in the streets of Murray Hill.

(*d*) The water system in the streets of Hawley Heights.

(*e*) The wood stave pipe supplying North La Mesa, approximately 8,000 feet long.

(*f*) The following lengths of pipe in the main distributing system:

Pipe	Lin. ft.
4 inch riveted steel	7,500
6 inch riveted steel	1,200
8 inch riveted steel	5,000
3 inch screw casing	5,966
4 inch screw casing	3,296
6 inch screw casing	334
8 inch screw casing	284
10 inch screw casing	350
11 inch screw casing	339
1 inch standard screw	9,898
1½ inch standard screw	2,395
2 inch standard screw	88,919
3 inch standard screw	10,042
4 inch standard screw	4,516
4 inch cast iron	1,681
6 inch cast iron	7,422

(*g*) Wagons and tools now in use by company.

4. From the fourth schedule, being water appropriations, there is omitted the following item:

(*a*) Item No. 7—Permit for appropriation of water for power purposes of State Water Commission on Boulder Creek in section 10, township 14 south, range 3 east, S.B.M., for 50 cubic feet per second, filed May 9, 1913, granted March 12, 1914, and recorded in Book 4 of water claims at page 208.

By consent of all parties the hearing in this proceeding was consolidated with the hearings in Application No. 1432, Application No. 1231, Case No. 716, Case No. 724 and Supplemental Application No. 118, all being proceedings affecting the Cuyamaca company. It was stipulated that the evidence taken in each of these proceedings might be considered as having been offered and introduced in each of the other proceedings. Public hearings in these proceedings were held in the city of San Diego on February 15, 16, 17, 18, 19 and 20 and April 12, 13, 14, 15, 16 and 17, 1915. The parties in certain of these proceedings requested authority to file briefs, which briefs have now been filed. The present proceeding is now ready for decision.

At the hearing, the City of San Diego filed its Exhibit No. 8, adding to the list of property described in Exhibit "B," attached to the

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petition herein, being the exhibit which undertook to describe the entire property of Cuyamaca company, the following items:

1. Pumping plant No. 4 (below diverting dam).
2. Pumping plant No. 5 (Miles station).
3. Grossmont pump station.
4. La Mesa dam pumping plant.
5. Telephone lines.
6. Miles reservoir No. 2.
7. Measuring station below diverting dam.
8. Measuring station at Old Mission dam.
9. Boulder creek weir.
10. Sand creek cement shed.
11. Meteorlogical instruments.
12. Webster reservoir.
13. South Fork cook shack.
14. Right of way for flowage and keeper's house at diverting dam.
15. Right of way for Kelly ditch.

The City of San Diego also filed its Exhibit No. 15 containing additions to its Exhibit "C" attached to the petition herein. This exhibit adds to the property described in said Exhibit "C" attached to the petition herein four of the fifteen items described in City of San Diego's Exhibit No. 8, as follows:

Item No. 4—La Mesa dam pumping plant.
Item No. 5—Telephone lines.
Item No. 14—Right of way for flowage and keeper's house at diverting dam.
Item No. 15—Right of way for Kelly ditch.

Later in the hearing the City of San Diego filed as its Exhibit No. 22, a copy of Ordinance No. 6104 of the common council of the City of San Diego, amending section 1 of Ordinance No. 5977, being the ordinance under which these proceedings were initiated, by adding thereto section 1*a* to include the following additional lands, property and rights of the Cuyamaca company:

1. The southeast quarter of northeast quarter of section 7 and south half of northwest quarter and the southwest quarter of northeast quarter of section 8, township 15 south, range 2 east, S.B.M. (Kuehner property).

2. All riparian rights and rights of diversion on and along the San Diego river, owned or controlled by James A. Murray, Ed Fletcher and William G. Henshaw, all as more particularly shown and described in Cuyamaca company's Exhibit No. 30 in Application No. 1231.

3. Kelly ditch.

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4. (*a*) Motors, pumps, pipe lines, wells and other equipment installed or in process of installation at El Monte pumping plant;

(*b*) All pipe, casing and fittings located in El Cajon avenue and installed during the years 1914 and 1915 for the purpose of delivering flood waters of the San Diego river to the City of San Diego;

(*c*) 265 meters, varying in size from ⅝ inch to 3 inches.

All of which properties are described in City of San Diego's Exhibit No. 21 in this proceeding.

It appears that parcel No. 1, the Kuehner property, was already included in the original ordinance. The Kelly ditch, while not specifically included in the original ordinance, was included in the City of San Diego's Exhibit No. 8. The description of the El Monte pumping plant, as contained in the original ordinance, contains the following omnibus clause:

> "Together with all wells, pumps, pumping plants, oil tanks, storehouses and all other structures or personal property now situated, lying or stored thereon."

This language, which will be used in the description of the El Monte pumping plant property contained in Exhibit No. 1, attached hereto, speaking as of the date of the decision herein, will cover item No. 4*a* included in Ordinance No. 6104.

At the time the City of San Diego filed the copy of Ordinance No. 6104, being the city's Exhibit No. 22, the city also filed its Exhibit No. 21 containing a statement of certain additional properties consisting of the El Cajon avenue lines together with the connection with the City of San Diego's main at Highland avenue, the lines in the city of El Cajon, the master meters and certain additions to the El Monte pumping plant.

At the conclusion of the hearing, City Attorney Cosgrove requested that the City of San Diego's petition and schedules be considered as amended so as to include all property including all permits and privileges and all schedules, maps, charts and data concerning which testimony had been presented.

As the result of the original petition herein and of the various additions to the properties herein described, contained in the supplemental schedules filed by the City of San Diego, the Railroad Commission is now asked to fix and determine the fair compensation to be paid by the City of San Diego to Cuyamaca company for two separate and distinct property schedules, as follows:

1. The entire property of the Cuyamaca company with the exception of 601 acres retained by the company near Cuyamaca lake, being the same property described in Exhibit No. 1 attached to the opinion and order this day rendered in Application No. 1432, being the joint appli-

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cation of Murray and Fletcher and La Mesa and Spring Valley irrigation district.

2. A portion only of the property of the Cuyamaca company, being all of the property referred to in the preceding paragraph, except the items which have been excluded from the original and supplementary schedules, as hereinbefore specifically set out.

The facts bearing on the value of the property of the Cuyamaca company were fully discussed in the decision this day rendered in Application No. 1432. It would be surplusage to repeat here what was there said.

I find as a fact that the fair value of the property of Cuyamaca company described in Exhibit "B" attached to the petition herein together with the additions thereto, being the property particularly described in Exhibit No. 1 which is attached to the opinion and findings herein, and made a part hereof, is the sum of $745,000.00.

As already pointed out in the summary of the allegations of the petition herein, the City of San Diego requested that the Railroad Commission, if possible, determine separately and apart from the other portions of the property, the value of certain intangible items. Although I am anxious to accommodate the City of San Diego in this matter, I am of the opinion that such segregation can not be made. Whatever intangible items exist must be considered as enhancing the value of the utility's tangible properties: *Spring Valley Water Works* vs. *City and County of San Francisco,* 192 Fed. 137, 167; *Brunswick and Topsham Water District* vs. *Maine Water Company,* 99 Me. 371; 59 Atl. 537, 539. These intangible items can not be valued apart from the public utility system of which they are part and parcel. Accordingly, I regret my inability to follow the city's request in this particular.

It now becomes necessary to make a finding with reference to the compensation to be paid by the City of San Diego for that portion of the property of the Cuyamaca company which is described in Exhibit "C," attached to the petition herein, as modified at the hearing. This property will be described in Exhibit No. 2 which will be attached to the opinion and findings herein and made a part hereof. The dismemberment of the system of the Cuyamaca company as contemplated in this second schedule of properties will leave the properties remaining in the ownership of Cuyamaca company of considerably less value than their value as a portion of the company's entire system. In fact, certain of these properties, if segregated from the remaining properties, will have no value whatsoever. After careful consideration I find as a fact that the fair value of that portion of the lands, property and rights of the Cuyamaca company which is described in Exhibit "C"

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attached to the petition herein, as modified at the hearing herein, being the property particularly described in Exhibit No. 2, attached to the opinion and findings herein, which exhibit is hereby made a part of the opinion and findings herein, is the sum of $644,669.00, and that the severance damage to the property of Cuyamaca Water Company not taken will be the sum of $32,966.12.

I recommend the following findings:

FINDINGS.

City of San Diego, a city incorporated under the laws of the State of California, having filed with the Railroad Commission a petition setting forth the intention of said city to acquire under eminent domain proceedings the lands, property and rights of James A. Murray, Ed Fletcher and William G. Henshaw, engaged as copartners under the firm name and style of Cuyamaca Water Company in the ownership and operation of a public utility water company in San Diego County, and asking the Railroad Commission to fix and determine the just compensation to be paid to said James A. Murray, Ed Fletcher and William G. Henshaw for the public utility and the lands, property and rights thereof and for the specified portion of said lands, property and rights, and public hearings having been held and the commissioner who heard the evidence having made a personal inspection of said lands and property of said James A. Murray, Ed Fletcher and William G. Henshaw, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by the City of San Diego to James A. Murray, Ed Fletcher and William G. Henshaw, doing business under the firm name and style of Cuyamaca Water Company for said company's lands, property and rights as particularly described in the exhibit which is hereto attached, marked Exhibit No. 1 and made a part of these findings, is the sum of $745,000.00.

The Railroad Commission hereby finds as a fact that the just compensation to be paid by the City of San Diego to James A. Murray, Ed Fletcher and William G. Henshaw, doing business under the firm name and style of Cuyamaca Water Company, for that portion of their lands, property and rights which is particularly described in Exhibit No. 2 attached to the opinion and findings herein and made a part thereof, is the sum of $644,669.00 and that the severance damage to the property of Cuyamaca Water Company not taken, which damages are to be paid by City of San Diego if the lands, property and rights described in said Exhibit No. 2 are taken, is the additional sum of $32,966.12, making a total of $677,635.12 as the just compensation to be paid by the City of San Diego.

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The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

EXHIBIT No. 1

SCHEDULE "A"—REAL PROPERTY.

Parcel No. 1.

Cuyamaca reservoir and grounds at keeper's house.

DESCRIPTION.

All that portion of lots "D," "E" and "G" of the Cuyamaca Rancho in said county as set out in the decree of partition of said rancho recorded in Book 43 of Deeds at page 309 *et seq.* in the county recorder's office of said county, particularly described as follows:

Beginning at a point N. 89° 25′ E. 448.8 feet from corner 6 of said lot "E," thence N. 21° 12′ E. 1,094 feet, thence N. 4° 20′ E. 995.5 feet, thence N. 32° 18′ W. 507.6 feet, thence N. 10° 27′ W. 866.5 feet, thence N. 53° 42′ W. 439 feet, thence N. 2° 52′ W. 141.3 feet, thence N. 40° 6′ W. 536.1 feet, thence N. 69° 26′ W. 193.4 feet, thence N. 65° 11′ W. 671.1 feet, thence S. 37° 52′ W. 309.3 feet, thence N. 52° 8′ W. 640.5 feet, thence N. 37° 57′ E. 1,028 feet, thence S. 76° E. 1,043 feet, thence S. 89° 13′ E. 504.8 feet, thence S. 79° 40′ E. 880.7 feet, thence N. 74° 57′ E. 408.5 feet, thence S. 80° 7′ E. 571.4 feet, thence N. 36° 13′ E. 451.5 feet, thence N. 54° 30′ E. 11.21 chains, thence N. 40° 30′ E. 11.97 chains, thence N. 62° 6′ E. 17.88 chains, thence N. 22° E. 13.48 chains, thence S. 41° E. 4.16 chains, thence N. 45° E. 11.82 chains, thence S. 83° 15′ W. 9.47 chains, thence N. 20° 15′ E. 17.68 chains, thence N. 61° 30′ E. 12.73 chains, thence N. 10° 30′ E. 7.80 chains, thence N. 18° 45′ W. 11.74 chains, thence N. 1° 39′ W. 5.53 chains, thence N. 53° 15′ E. 12.35 chains, thence N. 14° 30′ E. 13.03 chains, thence S. 68° 15′ E. 10.30 chains, thence S. 7.50 chains, thence S. 25° 30′ E. 7.87 chains, thence S. 16° 15′ W. 11.66 chains, thence S. 27° 45′ E. 21.67 chains, thence N. 82° 30′ E. 14.01 chains, thence S. 32° 45′ E. 10.45 chains, thence S. 62° E. 6.97 chains, thence S. 26° 15′ W. 7.20 chains, thence S. 33° E. 5.75 chains, thence N. 89° 39′ W. 5.45 chains, thence S. 8.64 chains, thence S. 48° 30′ W. 11.51 chains, thence N. 52° 15′ W. 5.91 chains, thence N. 32° 15′ W. 5.45 chains, thence S. 69° 7′ W. 7.43 chains, thence S. 15° 16′ E. 11.69 chains, thence S. 34° 29′ E. 8.24 chains, thence S. 12° 15′ E. 4.03 chains, thence S. 32° 21′ W. 12.23 chains, thence S. 12° 40′ W. 13.32 chains, thence S. 10° 24′ W. 7.91 chains, thence S. 41° 53′ W. 5.20 chains, thence S. 7° 44′ W. 7.67 chains, thence S. 74° 27′ W. 15.09 chains, thence S. 22′ W. 5.92 chains, thence S. 89° 25′ W. 20 chains, thence N. 22′ E. 5.12 chains, thence N. 41° 25′ W. 7.83 chains, thence N. 58° 8′ W. 6.58 chains, thence N. 28° 15′ W. 5.20 chains, thence N. 15′ E. 4.70 chains, thence N. 26° 46′ W. 2.42 chains, thence N. 75° 15′ W. 6.97 chains, thence S. 57° 30′ W. 2.65 chains, thence S. 22° W. 8.33 chains, thence N. 77° W. 3.03 chains, thence N. 41° W. 4.55 chains, thence S. 73° W. 8.33 chains, thence S. 62° 30′ W. 4.92 chains, thence S. 34° 15′ W. 7.58 chains, thence S. 8° 15′ W. 7.58 chains, thence S. 10° 45′ E. 4.92 chains, thence S. 29° E. 4.55 chains, thence S. 56° 30′ E. 1.79 chains, thence N. 84° 30′ E. 4.05 chains, thence N. 59° E. 7.58 chains, thence N. 86° E. 3.79 chains, thence S. 68° E. 6.97 chains, thence S. 32° 2′ E. 5.30 chains, thence S. 24° 58′ W. 3.03 chains, thence N. 65° 2′ W. 10.61 chains, thence S. 71° 58′ W. 1.21 chains, thence S. 43° 58′ W. 9.09 chains, thence S. 52° 57′ W. 3.99 chains, thence S. 23° 59′ W. 7.77 chains, thence N. 65° 4′ W. 5.70 chains, thence S. 73° 46′ W. 5.07 chains, thence S. 30° 10′ W. 7.14 chains, thence W. 2.58 chains, thence S. 3.02 chains, thence W. 10 chains, subject to the reversionary interest in favor of R. W. Waterman to the property described in deed from R. W. Waterman to San Diego Flume Company, recorded in Book 188, page 141 of Deeds, records of San Diego County, California.

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Parcel No. 2.

Poverty Gulch Reservoir Site.

DESCRIPTION.

Northeast ¼ of southwest ¼ and N. ½ of southeast ¼ of section 3, township 15 south, range 3 east, S.B.M., containing 120 acres.

Parcel No. 3.

Kuehner property, upon which Chocolate pumping plant and El Capitan reservoir site are located.

DESCRIPTION.

Southeast ¼ of northeast ¼ of section 7 and S. ½ of northwest ¼ and southwest ¼ of northeast ¼ of section 8, in township 15 south, range 2 east, S.B.M., containing 160 acres.

Parcel No. 4.

Webster Reservoir.

DESCRIPTION.

Block 9 of Villa Caro Heights per map thereof No. 1345 of records of San Diego County, California, containing 0.14 acres more or less.

Parcel No. 5.

Murray Hill Reservoir.

DESCRIPTION.

All that portion of lot 136 of Murray Hill per map thereof No. 1342 filed in the county recorder's office of San Diego County, California, lying east of a straight line, between the west corner of lot 80 of Murray Hill and the west corner of lot 125 of Murray Hill, and containing 15.4 acres more or less.

Parcel No. 6.

Park Reservoir (also known as Miles Reservoir No. 1).

DESCRIPTION.

The Park reservoir site and the reservoir built thereon situate in lots 1 and 2, block 29, El Cajon Heights, as per license survey map No. 50, records of San Diego County, and more particularly described as follows, to wit:

Commencing at the southwest corner of lot 4, block 29, El Cajon Heights, thence S. 70° 52′ 30″ E. along the northeast line of the county road 178 feet; thence N. 79° 5½′ E. along said county road 1,150 feet; thence continuing north 79° 5½′ E. 16.1 feet to the point of beginning of the traverse of said reservoir; thence N. 10° 57′ E. 548.8 feet; thence N. 17° 11′ W. 100.5 feet; thence N. 32° 11′ W. 50 feet; thence N. 29° 8′ E. 100 feet more or less to the southerly line of the San Diego flume right of way; thence along said southerly line S. 60° 52′ E. 472 feet; thence S. 32° 45′ W. 216.5 feet; thence S. 8° 15′ W. 263 feet more or less to the northerly line of said county road; thence along said northerly line of said county road S. 79° 3½′ W. 200 feet to the point of beginning, containing 3.42 acres more or less.

Parcel No. 7.

Eucalyptus Reservoir.

DESCRIPTION.

That portion of lot 4 in section 17, township 16 south, range 1 west, S.B.M., in the county of San Diego, State of California, more particularly described as follows:

Commencing at a point 541 feet N. 75° 36′ E. from the southwest corner of said lot 4, thence N. 75° 36′ E. 60 feet to corner No. 1, thence N. 71° 6′ E. 163.2 feet to

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corner No. 2, thence N. 88° 1′ E. 25.9 feet to corner No. 3, thence S. 79° 29′ E. 143.5 feet to corner No. 4, thence S. 66° 23′ E. 106.9 feet to corner No. 5, thence S. 58° 41′ E. 177 feet to corner No. 6, thence N. 3° 3′ E. 70.7 feet to corner No. 7, thence N. 45° 17′ W. 101.6 feet to corner No. 8, thence N. 52° 51′ W. 280.2 feet to corner No. 9, thence N. 45° 29′ W. 179.4 feet to corner No. 10, thence S. 84° 7′ W. 130.1 feet to corner No. 11, thence S. 72° 33′ W. 238 feet to corner No. 12, thence S. 16° 25′ E. 278 feet to point of beginning.

Also that certain other tract of land bounded and particularly described as follows, to wit:

Commencing at a point 108.2 feet N. 45° 9′ W. from corner No. 9 of the above described tract, thence N. 20° 21′ E. 350 feet, thence N. 69° 39′ W. 110 feet, to east side of right of way of San Diego Flume Company, thence S. 30° W. 344 feet along east side of said right of way, thence N. 84° 7′ E. 52 feet, thence S. 45° 29′ E. 71.2 feet to point of beginning.

Parcel No. 8.

La Mesa Reservoir.

DESCRIPTION.

That portion of La Mesa Colony in the Rancho Mission of San Diego, according to the map thereof filed in the county recorder's office of said San Diego County, September 4, 1901, and numbered 876 of the maps filed in said office, particularly described as follows:

Beginning at a point 855 feet N. 36° 32′ E. of the northwest corner of the southwest ¼ of section 13, township 16 south, range 2 west, S.B.M., at a stake set in the stone mound, thence N. 36° 32′ E. on boundary line of lot 19 of Rancho Mission of San Diego, according to the partition map thereof on file in the office of the clerk of the Superior Court of the county of San Diego, California, and also on file in the office of the recorder of said county, which boundary line of lot 19 on said Rancho Mission is as marked and delineated on said amended map of La Mesa Colony, to the corner of said lot 19, which lies west of the north boundary of lot 196 of said La Mesa Colony, thence east on the north boundary of said lot 19 of said Mission Rancho to the northwest corner of said lot 196 of La Mesa Colony, thence south, southerly and southeasterly along the westerly line of said lot 196 of La Mesa Colony and along the southerly boundary line of lots 195 and 194 of said La Mesa Colony, and continuing along the westerly and northerly boundary lines of the county road, as marked on said amended map of La Mesa Colony, to the easterly line of lot 157 of said La Mesa Colony, thence north on the east boundary line of said lot 157 of La Mesa Colony to the northeast corner thereof, thence west on the north boundary line of said lot 157 to the curved boundary line on the west side thereof, thence southwest, southerly and southeasterly along said curved west boundary line of said lot 157 to an intersection of said line with the section line, thence east on the south boundary line of said lot 157 to the southeast corner thereof, thence southwesterly along the boundary line of the county road as shown on map of La Mesa Colony to a point where said road deflects west, thence along said road following the deflection of the same around the north side and west side of lot 155 of said La Mesa Colony to a point where the south line of said lot 155 protruded across the county road is intersected, thence along the northerly boundary of said county road, following the detour thereof to a point where a line drawn parallel with and 190.7 feet at right angles southwesterly from La Mesa dam intersects the west boundary line of said county road, thence N. 60° 45′ W. parallel with said La Mesa dam, 847.5 feet to the point of beginning.

Parcel No. 9.

Monte Pumping Plant.

DESCRIPTION.

Beginning at the intersection of the northerly line of Julian avenue, and the east boundary line of El Cajon Valley Company's land as shown on map 289, filed

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in the office of the county recorder of said San Diego County December 30, 1886, which point is 40.33 feet north of the intersection of the center line of Julian avenue and said boundary line; thence north 1,173.5 feet along said boundary line to the San Diego River; thence N. 60° 31′ W. 57 feet; thence S. 1,248 feet to the northerly line of said Julian avenue; thence N. 48° 3′ E. along the line of Julian avenue to place of beginning.

Beginning at a point on the east boundary line of El Cajon Valley Company's land as shown on said map 289, 1,213.83 feet north of the intersection of the center line of Julian avenue and said boundary line; thence north along said boundary line 500 feet; thence N. 60° 31′ W. 57 feet; thence S. parallel to said boundary line 500 feet; thence S. 60° 31′ E. 57 feet to point of beginning.

Beginning at a point on the northerly line of Julian avenue and 50 feet W. of the point of intersection of the center line of said Julian avenue with the east line of El Cajon Valley Company's land as shown on said map 289; thence S. 48° 3′ W. along the northerly side of said Julian avenue 80.7 feet; thence N. 1,332 feet; thence S. 60° 31′ E. 68.92 feet; thence S. 1.248 feet to northerly line of Julian avenue and place of beginning.

Beginning at the intersection of the southerly line of Julian avenue with the east boundary line of El Cajon Valley Company's lands as shown on said map 289 which point is 40.33 feet south of the intersection of the center line of said Julian avenue and said boundary line; thence along the south line of said Julian avenue S. 48° 3′ W. 190 feet; thence at right angles S. 41° 57′ E. 213 feet to a point on said boundary line 285.4 feet south of the place of beginning; thence north to place of beginning.

Beginning at a point on the east boundary line of El Cajon Valley Company's land as shown on said map 289, 550.73 feet south of the point of intersection of the center line of said Julian avenue and said boundary line; thence west 569.7 feet to the southerly line of Julian avenue; thence N. 48° 3′ E. along southerly line of said Julian avenue 574.7 feet; thence at right angles S. 41° 57′ E. 213 feet to point on said boundary line; thence south along said boundary line 225 feet to point of beginning.

Together with wells, pumps, pumping plant, oil tanks, storehouses and all other structures or personal property now situate, lying or stored thereon.

Subject, however, to the reservations and encumbrances of various deeds of record.

SCHEDULE "B."

Rights of Way, United States Rights Granted and Pending, Floodage Rights and Riparian Rights.

No. 1—Right of Way.

Permit issued by United States Department of Agriculture, Forest Service, for a canal upon Boulder Creek; dated July 2, 1914.

No. 2—Right of Way.

Application to United States Department of Agriculture, Forest Service, for final power permit on Boulder Creek, filed June 6, 1914. Temporary permit to proceed with construction issued July 3, 1914; final stipulation signed August 3, 1914.

No. 3.

Contract to occupy lands and right of way for flume within the El Capitan Indian Reservation, with United States Department of the Interior, originally made with the San Diego Flume Company, as recorded in the office of the Commissioner of Indian Affairs at Washington, D. C., per letter from Department of Interior to Commissioner of Indian Affairs, dated September 16, 1892.

No. 4.

Amended right of way for concrete pipe line at Sand Creek over land in the El Capitan Indian Reservation, approved by United States Indian Service June 25, 1913, as per departmental letter of July 29, 1913.

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No. 5.

Amended right of way for steel pipe line at South Fork Canyon, over the El Capitan Indian Reservation, granted in 1912.

No. 6.

Application for lands for reservoir purposes and easements for Conejos reservoir, pending; filed with the United States Department of the Interior in May, 1912. Stipulations signed for a payment of $2,600.00 for lands to the Indian Bureau, in 1914.

No. 7.

Permit for use of public land for reservoir purposes in Poverty Gulch reservoir site July 26, 1913.

In southwest ¼ of southeast ¼ and southeast ¼ of northeast ¼, section 3, township 15 south, range 3 east, S.B.M. Approximately 40 acres.

No. 8.

Permit to occupy lands within the El Capitan Indian Reservation for pumping purposes, granted by United States Department of Interior, dated September 12, 1913.

No. 9.

Right of way for the San Diego flume from the west boundary of El Capitan Indian Reservation to the Eucalyptus reservoir, traversing section 12, township 15 south, range 1 east, El Cajon Rancho, sections 17 and 18 of township 16 south, range 1 east, through section 24, township 16 south, range 1 west and through section 17, township 16 south, range 1 west.

No. 10.

Right of way for La Mesa ditch and pipe line through section 17, township 16 south, range 1 west and through La Mesa Colony to La Mesa reservoir.

No. 11.

A general right of way for pipe lines through all lots in La Mesa Colony.

No. 12.

Franchise of the county of San Diego granted December 22, 1913, as per resolution of the board of supervisors, upon El Cajon avenue, Monroe street, Monroe way, Isabella street, Ramona street and Lincoln street.

No. 13.

Franchise for pipe line granted by the city of La Mesa upon El Cajon avenue by ordinance dated December 26, 1913.

No. 14.

Franchise for pipe line granted by the city of East San Diego upon El Cajon avenue dated February 9, 1914.

No. 15.

The lease of parcel of land for pumping station in the northwest corner of lot "K," La Mesa Colony.

No. 16.

Easements and rights of way acquired by condemnation proceedings in the Superior Court in an action of *Murray & Fletcher* vs. *La Mesa Development Company*, judgment rendered on July 30, 1914.

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No. 17.

Floodage rights over lands in La Mesa reservoir, to a maximum height of reservoir of 100 feet granted by Junipero Land and Water Company to San Diego Flume Company May 14, 1887, and recorded in Book of Deeds 99, page 466, records of San Diego County, California.

SCHEDULE "C."

PHYSICAL STRUCTURES AND IMPROVEMENTS.

No. 1.

DAMS USED IN THE OPERATION OF THE WATER SYSTEM AS FOLLOWS:

The Cuyamaca dam.
The diverting dam upon the San Diego River.
The Eucalyptus dam located at the end of the flume.
The Murray Hill dam.
The La Mesa dam.

No. 2.

CONVEYING SYSTEM.

Flume, siphons, tunnels and conduits 33 miles in length, constituting the San Diego flume, and flume known as South Fork feeder.

No. 3.

PUMPING PLANTS DESCRIBED AS FOLLOWS:

Pumping Plant No. 1.—The pumping plant known as No. 1 is located at the corner of Victoria street and Ramona avenue, in La Mesa Colony.

Pumping Plant No. 2.—East 10 acres of southwest ¼ of northeast ¼ of section 8, township 15 south, range 2 east, S.B.M., and right of way for pipe line over lands of Robert Alvord in northwest ¼ of southeast ¼ of said section 8, to the flume of Murray & Fletcher; including pumping plant, wells and pipes on said lands.

Pumping Plant No. 3.—Pumping plant known as Plant No. 3 is located upon El Capitan Indian Reservation by permit of United States Department of Interior, located as follows:

In the southwest ¼ of southwest ¼ of section 22, township 14 south, range 2 east, S.B.M., whence southwest corner of said section 22 bears from center of said pumping plant house S. 38° W., 1,000 feet approximately; also wells and suction pipe lines occupying a strip of land 25 feet wide extending from center of said pumping plant house N. 45° W., 400 feet approximately, and a discharge line occupying a strip of land 5 feet wide extending from said S. 40° E., 350 feet, approximately to the flume of Murray & Fletcher.

No. 4.

DISTRIBUTING PIPE LINES AS FOLLOWS:

The city of El Cajon system partly installed and under construction.

The Grossmont Park system, consisting of a reservoir in lot 469 and a reservoir in lot 449 in Grossmont Park, subdivision No. 3, and a reservoir in lot 21 and a reservoir near lot 75 of Grossmont Park, subdivision No. 1; all pipe lines connecting these reservoirs and other distributing lines laid upon the private ways within these subdivisions up to and including meters of the consumers and the pipe line known as the Helix pipe line.

The water system in the streets of Murray Hill.

The water system in the streets of Hawley Heights.

The 36-inch pipe line connecting the flume and Murray Hill reservoir.

The 24-inch pipe line connecting Murray Hill and Eucalyptus reservoirs.

The ditch and pipe line known as La Mesa ditch connecting the flume and La Mesa reservoir.

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The 24-inch redwood pipe connecting La Mesa reservoir with the main distributing pipe at the corner of Victoria street and Ramona avenue, in La Mesa Colony.

Wood stave pipe supplying North La Mesa, approximately 8,000 feet long.

The main distributing system beginning at the Eucalyptus reservoir and running thence along El Cajon avenue, through the cities of La Mesa and East San Diego and all branches owned by Murray & Fletcher, consisting of:

Pipe	Lin. ft.
4 inch riveted steel	7,500
6 inch riveted steel	1,200
8 inch riveted steel	5,000
14 inch riveted steel	15,920
16 inch riveted steel	24,760
3 inch screw casing	5,966
4 inch screw casing	3,296
6 inch screw casing	334
8 inch screw casing	284
10 inch screw casing	350
11 inch screw casing	339
12 inch screw casing	927
1 inch standard screw	9,898
1½ inch standard screw	2,395
2 inch standard screw	88,919
3 inch standard screw	10,042
4 inch standard screw	4,516
4 inch cast iron	1,681
6 inch cast iron	7,422
12 inch cast iron	51

No. 5.

BUILDINGS AS FOLLOWS:

Buildings at Cuyamaca reservoir, La Mesa reservoir and Eucalyptus reservoir.

Section houses at diverting dam, Chocolate Canyon, Los Coches, Los Coches trestle and section No. 5.

No. 6.

Wagons and tools, now in use by company.

SCHEDULE "D."

WATER APPROPRIATIONS.

No. 1.

Appropriation by San Diego Flume Company of the diverting dam on San Diego River, for 6,000 miner's inches, dated May 28, 1886, and recorded in Book of Water Claims No. 1, page 146.

No. 2.

Appropriation by San Diego Flume Company on south fork of San Diego River, for 4,000 miner's inches, dated June 29, 1886, and recorded in Book of Water Claims No. 1, page 152.

No. 3.

Appropriation by San Diego Flume Company on Boulder Creek (at Cuyamaca reservoir), for 2,000 miner's inches, dated August 4, 1886, and recorded in Book 1, page 159.

No. 4.

Appropriation by B. Otterstedt (assigned to Ed Fletcher) at diverting dam of San Diego River, for 100,000 miner's inches, dated June 1, 1910, and recorded in Book 4 of Water Claims, page 51.

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No. 5.

Appropriation by W. E. Keenan (assigned to Ed Fletcher) in the southwest ¼ of section 22, township 14 south, range 2 east, for 50 miner's inches of water, dated June 12, 1914, and recorded in Book 4, page 218 *et seq.* of Water Claims.

No. 6.

Appropriation by L. A. Olsen (assigned to Ed Fletcher) for 500 miner's inches in the northwest ¼ of section 8, township 15 south, range 2 east (El Capitan damsite), dated June 12, 1914, and recorded in Book of Water Claims No. 4, page 217 *et seq.*

No. 7.

Permit for appropriation of water for power purposes to State Water Commission on Boulder Creek in section 10, township 14 south, range 3 east, for 50 cubic feet per second, filed May 9, 1913, granted March 12, 1914, and recorded in Book of Water Claims No. 4, page 208.

SCHEDULE "E."

SUPPLEMENTAL SCHEDULE.

The following properties referred to in the opinion herein, and added by the Railroad Commission in accordance with provision in contract dated November 17, 1914, between James A. Murray and Ed Fletcher, copartners doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation Company, in accordance with stipulation at hearing:

1. Shops located at Normal Heights, with property on which they are located.
2. Materials and supplies on hand, including office equipment, supplies, maps, schedules, charts, drawings and other data collected by Cuyamaca Company.
3. Pumping plant No. 4.
4. Miles pumping plant.
5. Grossmont pumping plant.
6. La Mesa dam pumping plant.
7. Telephone lines.
8. Miles reservoir No. 2, with real property on which it is located.
9. Measuring station below diverting dam.
10. Measuring station at Old Mission dam.
11. Boulder Creek weir.
12. Sand Creek cement shed.
13. Meteorological instruments.
14. South Fork cook shack.
15. Right of way for flowage and keeper's house at diverting dam.
16. Kelly ditch and right of way therefor, being a ditch and right of way located above the Cuyamaca damsite and used for the purpose of diverting water into Cuyamaca reservoir.
17. All riparian rights and rights to diversion on and along San Diego River owned and controlled by James A. Murray, Ed Fletcher or William G. Henshaw, as more particularly shown and described in Cuyamaca company's Exhibit No. 30 herein.
18. All pipe, casings and fittings located in El Cajon avenue and installed during the years 1914 and 1915 for the purpose of delivering flood waters of the San Diego River to the city of San Diego.
19. Two hundred sixty-five meters, varying in size from ⅝ inch to 3 inches.

EXHIBIT No. 2.

All the lands, property and rights described in Exhibit No. 1 attached to the opinion and findings herein, except as follows:

Item No. 1.—Poverty Gulch reservoir site—northeast ¼ of southwest ¼ and north ½ of southeast ¼ of section 3, township 15 south, range 3 east, S.B.M., containing 120 acres.

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Item No. 2.—Webster reservoir site—block 9 of Villa Caro Heights as per map thereof No. 1345 of records of San Diego County, California, containing .14 acres, more or less.

Item No. 3.—Park reservoir site (also known as Miles No. 1 reservoir site)—commencing at the southwest corner of lot 4, block 29, El Cajon Heights, thence S. 70° 52′ 30″ E. along the northeast line of the county road 178 feet; thence N. 79° 5½′ E. along said county road 1,150 feet; thence continuing N. 79° 5½′ E. 16.1 feet to the point of beginning of the traverse of said reservoir; thence N. 10° 57′ E. 548.8 feet; thence N. 17° 11′ W. 100.5 feet; thence N. 32° 11′ W. 50 feet; thence N. 29° 8′ E. 100 feet more or less to the southerly line of the San Diego flume right of way; thence along said southerly line S. 60° 52′ E. 472 feet; thence S. 32° 45′ W. 216.5 feet; thence S. 8° 15′ W. 263 feet more or less to the northerly line of said county road; thence along said northerly line of said county road S. 79° 3½′ W. 200 feet to the point of beginning. Containing 3.42 acres more or less.

Item No. 4.—Permit issued by United States Department of Agriculture, Forest Service, for a canal upon Boulder Creek, dated July 2, 1914.

Item No. 5.—Application to United States Department of Agriculture, Forest Service, for final power permit on Boulder Creek, filed June 6, 1914—temporary permit to proceed with construction issued July 3, 1914, and final stipulation signed August 3, 1914.

Item No. 6.—Contract to occupy lands and right of way for flume within the El Capitan Indian Reservation with United States Department of the Interior, originally made with the San Diego Flume Company, as recorded in the office of the Commissioner of Indian Affairs at Washington, D. C., as per letter from Department of Interior to Commissioner of Indian Affairs, dated September 16, 1892.

Item No. 7.—Amended right of way for concrete pipe line at Sand Creek over land in the El Capitan Indian Reservation, approved by United States Indian Service June 25, 1913, as per departmental letter of July 29, 1913.

Item No. 8.—Amended right of way for steel pipe line at South Fork Canyon over the El Capitan Indian Reservation, granted in 1912.

Item No. 9.—Application for lands for reservoir purposes and easements for Conejos reservoir, pending, filed with the United States Department of the Interior in May, 1912, stipulations for a payment of $2,600.00 for lands to the Indian Bureau having been signed in 1914.

Item No. 10.—Permit for the use of public lands for reservoir purposes in Poverty Gulch reservoir site, July 26, 1913, being approximately 40 acres in the southwest ¼ of the southeast ¼ and the southeast ¼ of the northeast ¼ of section 3, township 15 south, range 3 east, S.B.M.

Item No. 11.—Permit to occupy lands within the El Capitan Indian Reservation for pumping purposes, granted by United States Department of the Interior, dated September 12, 1913.

Item No. 12.—A general right of way for pipe lines through all lots in La Mesa Colony.

Item No. 13.—The city of El Cajon's distributing system, partly installed and partly under construction.

Item No. 14.—The Grossmont tract system, consisting of a reservoir in lot No. 449 in Grossmont tract, subdivision No. 3, and a reservoir in lot No. 21 and a reservoir near lot No. 75 of Grossmont tract, subdivision No. 1, together with all pipe lines connecting these reservoirs and other distributing lines laid upon the private ways within these subdivisions up to and including meters of the consumers and the pipe line known as the Helix pipe line.

Item No. 15.—The water system in the streets of Murray Hill.

Item No. 16.—The water system in the streets of Hawley Heights.

Item No. 17.—The wood stave pipe supplying North La Mesa, approximately 8,000 feet long.

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Item No. 18.—The following lengths of pipe in the main distributing system:

Pipe	Lin. ft.
4 inch riveted steel	7,500
6 inch riveted steel	1,200
8 inch riveted steel	5,000
3 inch screw casing	5,966
4 inch screw casing	3,296
6 inch screw casing	334
8 inch screw casing	284
10 inch screw casing	350
11 inch screw casing	339
1 inch standard screw	9,898
1½ inch standard screw	2,395
2 inch standard screw	88,919
3 inch standard screw	10,042
4 inch standard screw	4,516
4 inch cast iron	1,681
6 inch cast iron	7,422

Item No. 19.—Wagons and tools now in use by company.

Item No. 20.—Permit for appropriation of water for power purposes of State Water Commission on Boulder Creek in section 10, township 14 south, range 3 east, S.B.M., for 50 cubic feet per second, filed May 9, 1913, granted March 12, 1914, and recorded in Book 4 of Water Claims, at page 208.

Item No. 21.—Pumping plant No. 4 (below diverting dam).

Item No. 22.—Pumping plant No. 5 (Miles Station).

Item No. 23.—Grossmont pump station.

Item No. 24.—Miles reservoir No. 2.

Item No. 25.—Measuring station below diverting dam.

Item No. 26.—Measuring station at Old Mission dam.

Item No. 27.—Boulder Creek weir.

Item No. 28.—Sand Creek cement shed.

Item No. 29.—Meteorological instruments.

Item No. 30.—Webster reservoir.

Item No. 31.—South Fork cook shack.

DECISION NO. 2528.

FAIRMONT WATER COMPANY

vs.

CUYAMACA WATER COMPANY, JAMES A. MURRAY AND ED FLETCHER.

Case No. 716.

Decided June 26, 1915.

Complainant, purchasing water in wholesale quantities from defendant for distribution through their own distributing system at a rate of 18 cents per 1,000 gallons, alleges that such rate is unjust and discriminatory in that defendant is furnishing other wholesale consumers at a lesser rate, particularly the Granada Company similarly situated as complainant, such company receiving water at 15 cents per 1,000 gallons. Complainant further contends that 9.92 cents is a just rate for water and that it is entitled to reparation of the excess amounts collected.

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Held, That complainant has established a clear case of discrimination and defendant directed to refund all amounts collected for water since August 27, 1914, in excess of 15 cents per 1,000 gallons, which rate shall be hereafter charged complainant; complaint in all other respects dismissed.

Haines & Haines, for Complainant.

Sweet, Stearns & Forward, by *F. W. Stearns*, *S. B. Robinson* and *A. E. Chandler*, for Defendants.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The amended complaint herein alleges in part that complainant is engaged in the business of purchasing water as a public utility at wholesale from the defendants and of distributing the same through complainant's distributing system to consumers in the city of East San Diego; that James A. Murray and Ed. Fletcher, as co-partners, own and operate the public utility water system known as the Cuyamaca system; that the rates at which complainant is supplying water to its consumers are, for domestic use 25 cents per 1,000 gallons, with a minimum charge of $1.25 per month, the complainant to furnish meters and cost of installation of all facilities and consumer to furnish pipes upon his own premises; that in Decision No. 764 rendered by the Railroad Commission on July 1, 1913, the rate to be paid by Pacific Building Company, complainant's predecessor, for water supplied by the Cuyamaca Water Company, hereinafter referred to as the Cuyamaca company, was established as 18 cents per 1,000 gallons up to a total consumption of 9,875 miner's inches per annum; that on August 18, 1914, the Railroad Commission rendered its Decision No. 1738 in Case No. 631, in which decision it was ordered that Cuyamaca company establish as rates to be charged for domestic water consumers in every instance where water is not delivered at the expense of the company to the property line of the individual consumer, to wit, minimum monthly payment during use, 75 cents, with a charge of 15 cents per 1,000 gallons when meters are installed; that said rates were made applicable, among other wholesale purchasers, to an associated group of consumers on the tract known as the Granada Park in the immediate vicinity of the tract served by complainant under substantially identical conditions under which complainant serves its water from the Cuyamaca company; that no reason exists why complainant should pay 18 cents per 1,000 gallons while the Granada tract pays only 15 cents per 1,000 gallons; that complainant claims that the terms of said Decision No. 1738 apply to it and that under said decision the legal rate applicable to complainant since the effective date of said decision has been 15 cents and not 18 cents per 1,000

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gallons; that complainant operating under said rate has incurred substantial losses in the year from July 1, 1913, to June 30, 1914; and that said rate of 18 cents per 1,000 gallons heretofore established by the Railroad Commission is excessive and confiscatory. The complainant asks that the Railroad Commission reduce the rate to be paid by it for water to the Cuyumaca company from 18 cents to 9.92 cents per 1,000 gallons and that it be determined that the complainant became entitled to the benefit of the rate of 15 cents per 1,000 gallons from and after August 27, 1913.

Defendants deny that the rate of 18 cents per 1,000 gallons charged by them to complainant is an excessive or unreasonable rate.

This case was consolidated for hearing with the other so-called Cuyamaca proceedings, being Application No. 1231, Application No. 1432, Application No. 1482, Supplemental Petition in Application No. 118 and Case No. 724, in all of which proceedings decisions are this day being rendered.

This case presents three issues as follows:

1. The reasonableness of the rate.

2. The proper interpretation of this Commission's Decision No. 1738, rendered on August 18, 1914, in Case No. 631.

3. Discrimination in charges.

In order to determine the issue as to the reasonableness of the rate *per se* it will be necessary to consider the entire operations of the Cuyamaca company. In the decision this day being rendered in Application No. 1231, being the application of the Cuyamaca company for authority to increase its rates, the Commission points out why it is inadvisable at the present time to pass upon the request for an increase in rates. Attention is drawn in said decision to the fact that the property is about to be acquired by a public authority and also that the Cuyamaca company has not as yet shown by practical demonstration that it is now able to meet fully the requirements of its consumers. It is provided in said decision that the question of the reasonableness of the rates shall be left in abeyance until at least November 15, 1915. The Commission could not decide the issue of the reasonableness of the rate charged to the complainant herein unless it went into the entire matter which is to be held in abeyance.

With reference to the issue as to the proper interpretation of the Commission's Decision No. 1738 in Case No. 631, rendered on August 18, 1914, I find that the complainant's contention is correct. While it is true that the order recites that the rates to be charged by the Cuyamaca company to the Fairmont Water Company had theretofore been established by the Commission, the Cuyamaca company is

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directed to establish the following rates for domestic water consumers as defined by Rule 8:

> "In every instance where water is not delivered at the expense of the company to the property line of the individual consumer, to wit, minimum monthly payment during use, 75 cents."
> "When meters are installed, per 1,000 gallons, 15 cents."

The opinion in that proceeding shows that the higher rates theretofore established for the Cuyamaca company for domestic consumers were to be charged only where the Cuyamaca company delivered water to the consumers through its own distribution system. In the present case the Fairmont Water Company is under the necessity of using its own distribution system for the purpose of delivering to its consumers the water purchased from the Cuyamaca company. The Cuyamaca company does not deliver water to the property lines of the individual consumers under the system of Fairmont Water Company but delivers the water from its mains directly to Fairmont Water Company without the intervention of any distributing system.

The decision in said Case No. 631 provides that the rates therein established should be considered to apply upon and after July 1, 1914, and that all payments made or to be made for the use of water during the intervening period should be adjusted accordingly. This date was later changed to August 27, 1913. I find that the rate of 15 cents per 1,000 gallons, when meters are installed, to be charged for domestic water applies to Fairmont Water Company, and that the company is entitled to recover from the Cuyamaca company all excess amounts paid for water sold subsequent to August 27, 1913.

Entirely apart from the question of the proper interpretation of this Commission's decision in Case No. 631, the Fairmont Water Company would be entitled to a recovery on the issue of discrimination. The evidence shows that water is being sold by the Cuyamaca company for domestic use to the Granada tract at 15 cents per 1,000 gallons; that the Granada tract is situated in the immediate vicinity of the meter through which the Fairmont Water Company receives its water from the Cuyamaca company; and that the Granada tract is substantially in the same condition as the tract supplied with water by Fairmont Water Company, in so far as affects service from the Cuyamaca company. The Fairmont Water Company has established a clear case of discrimination. The delivery of water by the Cuyamaca company to the city of San Diego, at 10 cents per 1,000 gallons, further relied upon by Fairmont Water Company in proof of its claim of discrimination is not comparable with the delivery of water to Fairmont Water Company for the reason that the city of San Diego is receiving only surplus flood waters, while the Cuyamaca company is under obligation

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of supplying water to Fairmont Water Company throughout the entire year entirely irrespective of surplus flood waters.

I find that Cuyamaca Water Company should be directed to reimburse Fairmont Water Company for all moneys paid for water delivered subsequent to August 27, 1913, in excess of 15 cents per 1,000 gallons, and also that the legal rate to be henceforth charged by the Cuyamaca company for water sold to Fairmont Water Company is 15 cents per 1,000 gallons.

I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled matter, and the Railroad Commission being fully advised in the premises,

It is hereby ordered that Cuyamaca Water Company repay to Fairmont Water Company all moneys collected for the sale of water delivered subsequent to August 27, 1913, at a rate in excess of 15 cents per 1,000 gallons, and that the rate to be henceforth charged by Cuyamaca company for water sold to Fairmont Water Company shall be 15 cents per 1,000 gallons.

In all other respects the above entitled complaint is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

DECISION NO. 2529.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER AUTHORIZING AND PERMITTING AN INCREASE IN THE RENTALS, TOLLS AND CHARGES FOR WATER FURNISHED BY THEM AND SERVICE RENDERED BY THEM IN FURNISHING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 118.

Decided June 26, 1915.

The original order in these proceedings directed the water company not to serve any additional consumers with water for irrigation purposes. The La Mesa Development Company had heretofore entered into a contract with the former owners of this water system for the delivery of 150 miner's inches of water, though up to the present time it has only availed itself of 1 miner's inch. It now claims that the water company holds up the Commission's decision as preventing it from delivering any further amounts of water under such contract, wherefore

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the development company petitions that such order be amended to the end that it will except contractual obligations from such restricting clause so that it may be free to test the validity of its contract in the courts. Application granted, and previous decision amended accordingly.

Sweet, Stearns & Forward, for Applicants.

L. L. Boone, for La Mesa Development Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

SUPPLEMENTAL OPINION.

This is a petition by La Mesa Development Company for an order modifying this Commission's order of March 28, 1913, in the above entitled proceeding by adding thereto the following language:

> "Provided, however, that it is not intended by this order to prevent the said James A. Murray and Ed Fletcher from performing any valid contract for the supply of water which exists at the time of making this order, to wit, on this 28th day of March, 1913, made by the San Diego Flume Company, the predecessor in interest of the said James A. Murray and Ed Fletcher."

The petition alleges in part that on February 7, 1908, San Diego Flume Company and La Mesa Development Company entered into a contract for a consideration of $120,000.00 paid to the San Diego Flume Company by the La Mesa Development Company, wherein and whereby the flume company agreed to supply the development company with 150 miner's inches of water, upon demand therefor, at any time within 20 years for use upon any lands belonging to the development company; that said contract was a valid contract when entered into and that it has not been rescinded or set aside; that on June 1, 1910, the flume company sold its water system to James A. Murray and that James A. Murray agreed, for himself and his successors in interest, to carry out all the contracts for the supply of water theretofore made by the flume company; that Murray subsequently transferred a one-sixth interest in the property to Ed Fletcher; that subsequent thereto the development company demanded performance of said contract of Murray and Fletcher but that performance was refused; that thereafter, on February 16, 1912, the development company brought suit against Murray and Fletcher in the Superior Court of San Diego County for the specific performance of the contract of February 7, 1908; that thereafter, on December 5, 1913, Murray and Fletcher set up as a defense to the suit the order of this Commission rendered on March 28, 1913, in the above entitled proceeding, and claimed that they could not perform the contract of February 7, 1908, on the ground that it conflicts with this Commission's said order; and that the Superior Court

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had previously adjudicated on demurrer to the complaint in said action, that the complaint stated facts sufficient to constitute a cause of action. The particular portion of this Commission's order of March 28, 1913, to which the development company objects is the direction that no additional consumers be added to the system except domestic consumers under the terms specified in the opinion. The development company has used only one miner's inch out of the 150 miner's inches referred to in the contract of February 7, 1908, and Murray and Fletcher, who are doing business under the firm name and style of Cuyamaca Water Company, take the position that under this Commission's order of March 28, 1913, it is forbidden to deliver water for irrigation to any land which was not being irrigated on March 28, 1913.

The Cuyamaca company further takes the position in this proceeding that the contract of February 7, 1908, is void *in toto* both as establishing a preference in favor of La Mesa Development Company as against other persons living within the area to the use of which the Cuyamaca company's water has been appropriated and dedicated and as attempting to carve out a private use in favor of the San Diego Flume Company's officers and directors through the instrumentality of another corporation, La Mesa Development Company, which had the same or almost the same officers and directors as San Diego Flume Company.

The question of the validity of the so-called water right contracts of the San Diego Flume Company is being adverted to in the decision this day being rendered by this Commission in Application No. 1432, being the joint application of James A. Murray and Ed Fletcher on the one hand and La Mesa, Lemon Grove and Spring Valley Irrigation District on the other, for an order authorizing the price at which the property of the Cuyamaca company is to be sold to the irrigation district, to which decision reference is hereby made.

If the contract of February 7, 1908, is void, as claimed by the Cuyamaca company, no harm will be done by amending this Commission's order of March 28, 1913, as requested by the development company. On the other hand, it was not this Commission's intention in its decision of March 28, 1913, to place stumbling blocks in the way of the performance by the Cuyamaca company of any valid outstanding contracts for the delivery of water. If the contract of February 7, 1908, is a valid and enforcible obligation against the Cuyamaca company, this Commission does not desire by any language in its order of March 28, 1913, to make performance of that contract difficult or impossible. Whether the contract of February 7, 1908, is valid or not is a matter for the determination of the courts. All parties should obviously work together to expedite the determination of this question so that the extent of the legal obligations of the Cuyamaca company's system for the delivery of water may be determined at as early a date as possible.

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The granting of the petition of the development company herein will not in any way change the obligations, if any, of the parties under the contract of February 7, 1908. Such action will merely place the development company in the position of being able to have adjudicated in the proper forum, without embarrassment from this Commission, the question whether or not its contract is valid.

I recommend that the petition of La Mesa Development Company be granted and submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

A public hearing having been held in the above entitled proceeding, and the Railroad Commission finding that the petition of La Mesa Development Company herein should be granted,

It is hereby ordered that the order rendered on March 28, 1913, in the above entitled proceeding be and the same is hereby modified by adding thereto the following proviso:

> "Provided, however, that it is not intended by this order to prevent the said James A. Murray and Ed Fletcher from performing any valid contract for the supply of water which exists at the time of making this order, to wit, on this 28th day of March, 1913, made by the San Diego Flume Company, the predecessor in interest of the said James A. Murray and Ed Fletcher."

In all other respects said order of March 28, 1913, as modified by subsequent orders, shall remain in full force and effect.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

DECISION NO. 2530.

TOWN OF LOS GATOS

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 665.

Decided June 26, 1915.

Complaint of the town of Los Gatos alleges that the rates of defendant are exorbitant and unjust, that its service is inadequate and the quality of its gas poor, and petitions the Commission, after an investigation, to make such order as may appear justified.

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Held. A review of conditions under which defendant operates in the town of Los Gatos shows that receipts under present rates are insufficient to cover cost of operation and at a conference with defendant's representatives it was agreed that if the present rate was reduced from $2.00 per 1,000 cubic feet to $1.50 per 1,000 cubic feet, thereby placing gas on a footing so that it may compete with other fuels, the increased consumption would materially increase defendant's receipts. Defendant accordingly directed to establish on and after July 26, 1915, a monthly rate of $1.50 per 1,000 cubic feet with a minimum monthly bill of $1.00. Complaint in all other respects dismissed.

D. T. Jenkins, for Complainant.

Charles P. Cutten, for Defendant.

REPORT OF THE COMMISSION.

THIELEN, *Commissioner.*

This is a complaint by the town of Los Gatos against the rates for gas and the quality and character of the service in that community.

The complaint alleges in effect that the present rates charged by Pacific Gas and Electric Company are unreasonable and exorbitant, that the gas is of poor quality and that the service is inefficient and inadequate. The Commission is asked to establish just and reasonable rates and to give such other relief as may be proper.

Defendant in its answer denies that its rates are unreasonable, that the gas is of poor quality and that the service is other than adequate and proper.

The present rates charged by defendant for gas sold by it in the town of Los Gatos are as follows:

TABLE I.

Present Rates for Artificial Gas in Los Gatos.

$2.00 per 1,000 cubic feet if monthly consumption is less than 10,000 cubic feet.
$1.50 per 1,000 cubic feet if monthly consumption exceeds 10,000 cubic feet.
Discount for prompt payment 20 cents per 1,000 cubic feet where the monthly consumption is in excess of 2,000 cubic feet, but does not exceed 10,000 cubic feet.
Minimum monthly charge, 50 cents per meter.

At the hearing of this case, tabulations showing the estimated value of the gas plant and system at Los Gatos, the operating revenues and expenses, and an estimated cost of developing the business based on a theoretical plant, were presented by defendant. The Railroad Commission's engineers presented a valuation report, a report showing the estimated cost of serving Los Gatos by means of a high pressure transmission pipe line from the San Jose plant, and an analysis of the cost to defendant of serving gas in the town of Los Gatos for the year 1914.

A careful consideration of the evidence shows that defendant's cost of service, during the year 1914, was in excess of the actual revenue

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received from the sale of gas. This condition follows from the small amount of gas used per consumer, which condition, in turn, is largely the result of the present rates, which are relatively higher than those in effect in other communities having a similar number of consumers.

After further investigation, it appears that there are two possible methods by which the cost of gas service in Los Gatos may be reduced. The first possibility is the service of Los Gatos from the San Jose plant through a high pressure transmission line, in accordance with the report of the Railroad Commission's engineers. This report and the testimony introduced in connection therewith show that the present cost to defendant of serving gas in the town of Los Gatos would be reduced if a high pressure transmission pipe line were constructed from the San Jose plant to serve Los Gatos.

The second method, which assumes the continued use of only the present facilities of defendant at Los Gatos, is to encourage the increased use of gas by reducing the present rates to a point where gas can be used in competition with other fuels. This latter method was discussed very frankly between the Commission's engineers and representatives of defendant, and as a result of this discussion defendant, at the suggestion of the Commission, voluntarily filed the following schedule of rates applicable to gas sold in the town of Los Gatos and effective on and after July 26, 1915:

TABLE II.

Rate.

On the basis of monthly consumption per meter, $1.50 per 1,000 cubic feet.
Minimum monthly charge, $1.00 per meter.

These rates will result in a net decrease of approximately 20 per cent in the cost of gas to the inhabitants of Los Gatos.

An investigation by this Commission indicates that the town of Los Gatos has no just complaint at this time as to the quality of gas supplied by defendant. Complainant admitted at the hearing that there now exists no material ground for complaint as to service. Hence it is unnecessary to further consider those allegations of the complaint which charge poor quality of gas and inefficient service.

After a careful consideration of the evidence herein, I find as a fact that the rates set forth in Table II herein, are just and reasonable rates to be charged by defendant for gas supplied by it in the town of Los Gatos.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision,

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It is hereby ordered that Pacific Gas and Electric Company from and after July 26, 1915, charge and collect for artificial gas supplied by it in and adjacent to the town of Los Gatos, the following rates:

On the basis of monthly consumption per meter, $1.50 per 1,000 cubic feet.
Minimum monthly charge, $1.00 per meter.

In all other respects the complaint herein is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

DECISION NO. 2531.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CUYAMACA WATER COMPANY, AND LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT FOR AN ORDER ESTABLISHING THE VALUE OF THE PROPERTY OF CUYAMACA WATER COMPANY AND AUTHORIZING CUYAMACA WATER COMPANY TO CONVEY SAID PROPERTY TO SAID DISTRICT.

Application No. 1432.

Decided June 26, 1915.

Applicants herein, including Murray and Fletcher, owners of Cuyamaca Water System and the La Mesa, Lemon Grove and Spring Valley Irrigation District, apply jointly for an order of the Commission establishing a fair price to be paid by the irrigation district for the water system and also for an order authorizing its transfer, to which application the city of San Diego files its petition in intervention objecting to the Commission authorizing such transfer, contending that it has negotiations pending looking toward the purchase of this system for the city. Though intervention permitted, no consideration can be given by this Commission to such objection, inasmuch as the question of who shall purchase the water system lies either upon an amicable agreement between the proposed purchasers or with the courts.

After a detailed review of the history of these properties, including operating conditions, and a resume of the different forms of contracts entered into between the former owners of this water system and its consumers, the investigation into the actual value of the properties is made, being divided, for convenience, into seven sections, including physical structures, real property, water rights, going concern, original cost, additions and betterments and special considerations, and the sum of $745,000.00 decided upon as a fair and reasonable amount to be paid for the water properties in question, in connection with which the Commission considers:

That the present flume is entirely too large for the requirements of this system and correspondingly exceedingly expensive to maintain, that the purchasers of this system face the necessity of constructing an entire new flume within a very

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short time, which facts detract considerably from the value of this property for sale purposes.

Held, That as regards the water company's claim to a value of $999,000.00 on its water rights, in view of the fact that it originally paid only $150,000.00 for the entire system which included physical properties and all water rights which it now owns, very little consideration can be given thereto. The water company, while admitting that it cannot charge a rate high enough to permit of a return on the water right values which it claims, nevertheless claims an allowance for such rights for sale purposes, which if carried out would bar the purchaser from securing a return on that portion of his investment covering this item; that the water company entered into contracts for water service with various of its consumers, accepting a consideration therefor in payment for a water right and accordingly having once sold such right, it cannot now own them for the purpose of selling again.

That the water company has no right, as has been established by the Supreme Court of this State, to exact a charge for a water right from its consumers in addition to the regular rates for service; that in the absence of a decision bearing upon the rights of such consumers to secure a refund of the amounts collected for water rights, the Commission will give such moneys equitable consideration in the establishment of rates and will regard them, so far as consistent with a view to preventing discrimination, as advance payments on rates.

The water company also claims a water right value of $250,000.00 on a recent permit of the State Water Commission to appropriate certain waters from Boulder Creek, though no consideration whatever was paid to the State in connection therewith. It reaches this value by estimating the profits which it expects to derive from said right and capitalizing same at 8 per cent. *Held*, That having entered into no agreements for the sale of power which it proposes to generate and its estimates of expenditures and receipts being so purely speculative and vague, no consideration can be given to a claim of this nature for increasing values.

Held, As regards the water company's claim to an allowance for going concern: That considering the fact that it has not paid operating expenses and maintenance during practically the entire twenty-six years it has been in operation, it has very little if any value as a going business, in addition to the value of its tangible properties.

Held, That the water company's claim to an allowance of 10 per cent on all expenditures and the inclusion of all deficits in maintenance and operating expenses with an additional 10 per cent is too unreasonable for comment, an allowance of $25,000.00 with interest at 8 per cent covering deficits during the last five years considered reasonable.

That together with the excessively expensive flume, the water company has constructed considerable distributing mains for the purpose of serving property which it subdivided and placed upon the market, though which at present has only a very few residents; that such extensive distributing systems being expensive to maintain and producing very little revenue, depreciate the value of the property for sale purposes and must be so considered.

Sweet, Stearns & Forward, by *F. W. Stearns*, *S. R. Robinson* and *A. E. Chandler*, for James A. Murray, Ed Fletcher, William G. Henshaw and Cuyamaca Water Company.

Andrews & Wright, *Edgar A. Luce* and *Haines & Haines*, for La Mesa, Lemon Grove and Spring Valley Irrigation District.

T. B. Cosgrove, city attorney, for City of San Diego, Intervenor.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding in which the owner of a public utility water system and a public irrigation district which desires to purchase the same have joined in an application to the Railroad Commission to determine the fair value of the property of the utility and to authorize the owners thereof to convey the same to the district at the value thus found.

The petition alleges, in effect, that on November 17, 1914, James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, hereinafter referred to as the Cuyamaca company, entered into an agreement with La Mesa, Lemon Grove and Spring Valley Irrigation District, hereinafter referred to as the Irrigation district, wherein the Cuyamaca company agreed to sell and the Irrigation district agreed to buy the Cuyamaca company's water system for such sum as the Railroad Commission should determine to be its fair value; that a copy of the contract and of the property schedules attached thereto are attached to the petition and made a part thereof; that the parties are desirous that the terms of the contract be fulfilled, the fair value of the property established by the Railroad Commission and an order entered authorizing the conveyance of the property by the Cuyamaca company to the Irrigation district at the value thus determined; that on May 4, 1914, the Irrigation district, at a special election, voted to issue bonds of the face value of $1,232,500.00 for the purpose of diverting water for the use of the district and that of said issue $247,000.00, face value, of bonds have been sold, leaving in the hands of the Irrigation district bonds of the face value of $985,500.00 still unsold; that the Superior Court of the State of California, in and for the county of San Diego, on September 21, 1914, entered a decree declaring that the bonds of the Irrigation district are legal obligations; that the Irrigation district desires to purchase the Cuyamaca company's water system in order to supply the Irrigation district with water for agricultural and domestic purposes and that it is for the best interests of the Irrigation district that said system be acquired, operated and controlled by the Irrigation district; that the Cuyamaca company is willing to sell its water system to the Irrigation district, as provided in said contract; and that it is for the best interests of all parties and of the public service that such sale be consummated. The petitioners thereupon ask the Commission to fix and determine the fair value of the Cuyamaca company's property as provided in said contract and that the Railroad Commission make its order authorizing the Cuyamaca company to convey said properties to the Irrigation district at the value thus fixed and determined. The petition is signed by James A. Murray, Ed Fletcher and La Mesa, Lemon Grove

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and Spring Valley Irrigation District. At the hearing, W. G. Henshaw, to whom Ed Fletcher, by written agreement dated October 20, 1913, agreed to sell one-half of his one-sixth interest in the water system, authorized his appearance to be entered. Mr. Henshaw's interest in the property is that of an intending purchaser under an executory contract of sale. There was introduced in evidence as Cuyamaca company's Exhibit No. 18, a letter from W. G. Henshaw to Ed Fletcher, dated March 2, 1914, in which Mr. Henshaw says:

> "I am willing to sell at the same relative price that Mr. Murray may ask for his interest in the Cuyamaca system, providing, of course, that it at least brings me out with a profit."

Mr. Fletcher testified that Mr. Henshaw had approved the contract with the Irrigation district and that there was a thorough understanding that he will be bound by it.

The contract of November 17, 1914, provides, in effect, as follows:

1. The Cuyamaca company agrees to sell to the Irrigation district and the Irrigation district agrees to purchase from the Cuyamaca company all the properties described in the schedules attached to the contract.

2. The purchase and sale price of the property is to be such sum as the Railroad Commission shall determine to be the value thereof upon joint application by the parties to the contract. In this respect, the contract further provides as follows:

> "It is agreed and understood that the decision of the said Commission shall be final and binding upon both parties hereto, and that neither party shall have the right to appeal therefrom or to have a review thereof."

3. Upon the rendition of the Railroad Commission's decision the Irrigation district agrees to cause to be advertised for sale its 6 per cent bonds in such amount that the face value of the bonds, together with accrued interest thereon to the date of the sale, shall be equivalent to the value of the property as determined by the Railroad Commission. The Cuyamaca company agrees upon such sale to bid for said bonds par and accrued interest, said bonds to be taken in exchange for the property to be sold. The Irrigation district agrees to furnish to the Cuyamaca company an opinion by Dillon, Thompson & Clay, of New York, that the bonds are valid and enforceable obligations of the Irrigation district.

4. The Cuyamaca company agrees to furnish to the Irrigation district certificates of title showing good title to all the lands agreed to be sold, except rights of way.

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5. The Cuyamaca company represents to the Irrigation district "that there are no outstanding water contracts, or contracts to rent, sell, supply or distribute water, except those contracts and obligations to furnish water which were incurred by the San Diego Flume Company prior to the purchase of the said system by the parties of the first part herein; except also, those instances where obligations have been incurred to furnish water for domestic use in compliance with the orders of the Railroad Commission, and except also that certain lease made and entered into on the 19th day of October, 1914, by and between the parties of the first part herein and the city of San Diego, California, wherein and whereby the said city has rented for one year from the date of the said lease the right to use such portion of the flume, pipe lines, and other water carrying facilities of the said lessors as may be necessary or convenient to carry any waters pumped into the said flume by the said city from the San Diego River."

6. The Cuyamaca company agrees that it will not, without the written consent of the Irrigation district, prior to the determination of the value of said properties by the Railroad Commission, make any new or additional expenditures upon its system except such as may be necessary to keep the same in order and repair.

7. Prior to the transfer of the property the exterior boundaries of the Irrigation district shall be so changed as to include certain lands which are described in a schedule marked "Lands to be included in district," a copy of which schedule is presumably attached to the original contract but was not attached to the contract on file with the Railroad Commission.

8. The Cuyamaca company's properties are agreed to be sold "subject to all water right contracts or contracts to rent, sell, supply or distribute water hitherto made by the San Diego Flume Company (formerly the owner of the said water system), whether such contracts refer to water already furnished, or hereafter to be furnished."

The Irrigation district assumes and agrees to perform all such contracts to the same extent and in the same manner as the Cuyamaca company or the San Diego Flume Company are now bound to perform the same.

9. The parties intend to include in the schedule attached to the contract "all of the properties of the parties of the first part necessary or desirable by the party of the second part for its use in conserving and utilizing all of the waters of the said San Diego River." The parties agree "that in the event the Railroad Commission of the State of California should determine that other property now owned by the parties of the first part is necessary or desirable for such use, then the same shall be deemed included in this agreement of purchase and sale with the same effect as though the said properties had been specifically men-

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tioned and described in the said schedule; but it is agreed that at Cuyamaca dam, no lands will be required except those which would be flooded by the reservoir filled to the present height of the dam and a margin as per schedule."

10. Provision is made for the payment of interest on the value determined by the Railroad Commission and for the payment of the net income by the Cuyamaca company to the Irrigation district from and after June 1, 1915. The Cuyamaca company is to be under no obligation to transfer its properties unless the Irrigation district shall have kept all its covenants prior to January 1, 1916.

11. The contract is made subject to the approval of the Railroad Commission and of the engineering department of the State of California and the parties agree to make joint application for such approval immediately upon the execution of the contract.

Attached to the contract are four schedules describing the property to be conveyed. The first schedule is marked "Exhibit A," and contains descriptions of nine parcels of land. The second schedule is marked "Exhibit B," and contains a description of rights of way, permits, franchises, a lease and certain floodage rights over lands in connection with La Mesa reservoir. Schedule "C" contains a list of structures and improvements, including dams, transmission system, pumping plants, distributing system, buildings, wagons and tools. Schedule "D" contains a list of six notices of water appropriation, and one permit from the State Water Commission for the waters of Boulder Creek to be used for power purposes.

The city of San Diego filed a petition in intervention in which petition the city alleges that it has been negotiating for the purchase of the properties of the Cuyamaca company and desires to secure the same and intends to file proceedings in eminent domain in order to acquire the same. Attached to the petition is a copy of the petition in Application No. 1482, being an application filed with the Railroad Commission by the city of San Diego asking the Railroad Commission, in accordance with the terms of section 47 of the Public Utilities Act, to fix and determine the just compensation to be paid by the city of San Diego to James A. Murray, Ed Fletcher and William G. Henshaw, owners of the Cuyamaca company's water system. The petitioner alleges that if it is successful in acquiring the property it will use the same principally for the development and transmission of water for municipal purposes and that it will recognize as prior obligations existing valid claims against the system, if the system is secured by the city of San Diego without long and expensive litigation. The intervenor asks the Railroad Commission to refuse to authorize the Cuyamaca company to convey its property to the Irrigation district and to fix and determine the just

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compensation to be paid by the city of San Diego for the properties of Cuyamaca company, in accordance with the provisions of section 47 of the Public Utilities Act. While the city of San Diego was permitted to intervene in this proceeding and rendered very material assistance in the presentation of evidence showing the fair value of the property of Cuyamaca company, it is not the function of the Railroad Commission to determine which of the two intending purchasers shall secure the property. The Railroad Commission will, in the present proceeding, determine the fair value of the property in accordance with the terms of the contract between the Cuyamaca company and the Irrigation district and will authorize the transfer of the property to the Irrigation district for the compensation thus established, and the Railroad Commission will also, in Application No. 1482, fix and determine the just compensation to be paid by the city of San Diego, in case the city should acquire the property. The question as to which of these two public authorities shall acquire the property must then be left to the courts or, as I hope will be done, to an agreement between the city of San Diego and the Irrigation district. These parties should be able by fair and frank dealing with one another to settle this question without the necessity of protracted and expensive litigation.

The hearing in the present proceeding was consolidated with the hearings in Application No. 1482, hereinbefore referred to; Application No. 1231, being the application of Cuyamaca company for an order authorizing an increase in rates; Case No. 716, *Fairmount Water Company* vs. *Cuyamaca Water Company*; Case No. 724, *D. G. Gordon* vs. *James A. Murray and Ed Fletcher*; and supplemental application on behalf of *La Mesa Development Company* for a modification of the order heretofore made in Application No. 118, in which proceeding the Railroad Commission established the rates to be charged by Cuyamaca Water Company. It was stipulated that all the evidence taken in these proceedings should be considered, in so far as material, as having been presented in each of the proceedings and also that the evidence heretofore taken in Application No. 118 might be considered as having been presented, in so far as material, in each of these proceedings.

Public hearings were held in San Diego on February 15, 16, 17, 18, 19 and 20 and April 12, 13, 14, 15, 16 and 17, 1915. Briefs have been filed in accordance with the request of certain of the parties to these proceedings and this proceeding is now ready for decision.

Cuyamaca Water Company derives its water partly from accumulations in Cuyamaca reservoir, partly from diversion of the waters of San Diego River, partly from waters diverted from the south fork of the San Diego River, partly from the run-off of La Mesa reservoir and partly from pumping from the sands of San Diego River. Cuyamaca reservoir is located on the easterly extremity of the system, at the head

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of Boulder Creek. An earth-filled dam is built across a mountain meadow at this point. The reservoir has a drainage area of about 12 square miles and a capacity of about 10,800 acre feet. The waters in the reservoir are released, when needed, into the natural channel of Boulder Creek, through which channel they flow a distance of about 11½ miles into the San Diego River, at a point not to exceed one-half mile above the diverting dam. The Cuyamaca company's diverting dam is a structure composed of rubble masonry and concrete built across the San Diego River in section 11, township 14 south, range 2 east, S.B.M. The waters thus diverted are conveyed through a flume a distance of 33.1 miles to Eucalyptus reservoir at La Mesa. This flume consists mostly of a wooden box resting upon wooden sills on a bench which has been excavated from the hillside and in part of concrete flume, steel flume, siphons and tunnels. A small diverting dam is built across the south fork of the San Diego River. The waters thus diverted are transmitted through a wooden flume, a steel flume and a steel pipe into the main flume. Siphons are located at Sand Creek, South Fork, Chocolate Creek and between Murray Hill reservoir and Eucalyptus reservoir. Eight tunnels are located between the diverting dam on the San Diego River and Eucalyptus reservoir. Near the westerly end of the system are certain reservoirs of which the largest are La Mesa reservoir, Murray Hill reservoir and Eucalyptus reservoir. There are also certain smaller reservoirs, known as Webster reservoir, Miles reservoir No. 1, Miles reservoir No. 2 and four reservoirs in the Grossmont tract. The waters of Murray Hill and Eucalyptus reservoirs can be directed from one reservoir to the other through a concrete pipe line, connecting the two reservoirs. La Mesa reservoir, at the present height of the dam, being 66 feet, has a capacity of approximately 1,390 acre feet or about 450,000,000 gallons. Murray Hill reservoir has a capacity of 127 acre feet or 41,000,000 gallons. Eucalyptus reservoir has a capacity of 26 acre feet or approximately 8,000,000 gallons. An earthen ditch runs from the end of the flume at Eucalyptus reservoir to La Mesa reservoir. Practically all the territory below the end of the flume to the easterly boundary of the city of San Diego can be supplied from La Mesa reservoir, either by gravity or by pumping back by means of a booster pump located at the junction of a 24-inch wood stave line leading from La Mesa reservoir to the pipe line on El Cajon avenue leading from Eucalyptus reservoir. The system has pumping plants as follows: Pumping plant No. 4, being a small portable plant located a short distance westerly from the diverting dam; pumping plant No. 3, located at the junction of Sand Creek with the San Diego River; pumping plant No. 2, located at the junction of Chocolate Creek with the San Diego River; pumping plant No. 1, being the

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La Mesa booster plant; the Monte pumping plant, located east of Lakeside; the Grossmont pumping plant, used for the purpose of boosting water to the tract of land known as Grossmont, easterly from La Mesa; the Miles pumping plant, located at Miles reservoir No. 1, near Grossmont; a small pumping plant at Eucalyptus reservoir for domestic water supply; and the La Mesa pumping plant, located directly at the foot of La Mesa reservoir.

Cuyamaca company supplies its customers partly from its flume and partly through distributing pipes located between Eucalyptus reservoir and the easterly limits of the city of San Diego, and divided into what the company calls its high service and its low service.

It appeared at the hearing that the schedules attached to the contract of November 17, 1914, omitted certain property which is used and useful by Cuyamaca company in its public utility business. The contract provides that such properties shall be deemed included in the agreement of purchase and sale with the same effect as though they had been specifically mentioned and described in the schedules. I find that the omitted properties are as follows:

1. Shops located at Normal Heights.
2. Materials and supplies on hand, including office equipment, supplies, maps, schedules, charts, drawings and other data collected by Cuyamaca company.
3. Pumping plant No. 4.
4. Miles pumping plant.
5. Grossmont pumping plant.
6. La Mesa pumping plant.
7. Telephone lines.
8. Miles reservoir No. 2, with real property on which it is located.
9. Measuring station below diverting dam.
10. Measuring station at Old Mill dam.
11. Boulder Creek weir.
12. Sand Creek cement shed.
13. Meteorological instruments.
14. South Fork cook shack.
15. Right of way for flowage and keeper's house at diverting dam.
16. Kelly ditch and right of way therefor, being a ditch and right of way located above the Cuyamaca damsite and used for the purpose of diverting water into Cuyamaca reservoir.
17. All riparian rights and rights to diversion on and along San Diego River owned and controlled by James A. Murray, Ed Fletcher or William G. Henshaw, as more particularly shown and described in Cuyamaca company's Exhibit No. 30 herein.

While there was some question at the hearing with reference to certain additional installations which Cuyamaca company has made at

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Monte pumping plant, the description of the Monte pumping plant property contained in Schedule A attached to the contract is sufficiently broad, speaking as it does as of the date of the decision herein, to include all the property located on this land.

The value herein fixed and determined covers all the property of Cuyamaca company specifically described in the schedules attached to the contract, together with the additional property hereinbefore specifically designated, and all other property used and useful in connection with the property described in said schedules and hereinbefore described, in the operation of the Cuyamaca company's water system.

Cuyamaca company supplies water partly for irrigation and partly for domestic purposes. In 1912, the irrigation consumption was 94 per cent and the domestic consumption 6 per cent of the total amount of water sold, and in 1914, the irrigation consumption was 92½ per cent and the domestic consumption 7½ per cent of the total amount of water sold, excluding deliveries to the city of San Diego. During the years 1894 to 1906, inclusive, the Cuyamaca company sold large amounts of water for consumption in the city of San Diego. In 1906, the city of San Diego acquired its own water system and these sales ceased until 1914. In the year 1914, the Cuyamaca company sold to the city of San Diego, in addition to the irrigation and domestic water hereinbefore referred to, surplus waters amounting to 171,772,000 gallons, at the rate of 10 cents per 1,000 gallons. The sale of surplus water to the city of San Diego has continued this year to date, but the record does not show the entire amount of the water thus sold in 1915. In 1914, the Cuyamaca company supplied water for irrigation of 3,734.71 acres. The following tables taken from Railroad Commission's Exhibit No. "I," show the actual delivery of water for the years 1913 and 1914, at wholesale and at retail, in cubic feet, as follows:

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TABLE I.

Water Sold at Wholesale.

Groups	1913		1914	
	Irrigation	Domestic	Irrigation	Domestic
High service—				
Chollas mutual	739,450	88,840	861,167	329,780
La Mesa Mutual	188,350	2,258,203	427,627	2,509,702
Lemon Grove mutual	11,255,286	324,104	16,328,210	435,023
Spring Valley (Helix mutual)	7,081,491		7,692,734	109,360
Outlook terrace	207,457	200,743	200,784	215,286
Orchard tract—Lot 64	51,570	125,240	92,530	45,730
Wheeler tract	31,728	74,016	44,560	70,130
Orchard tract—Lot 70	3,213	75,990	58,136	45,575
Waverly tract	51,350	65,023	4,600	82,190
Petaluma tract	33,886	62,314	36,581	37,349
Marlett tract	177,870	90,940	228,942	47,219
Magruder tract	67,568	13,010	118,112	31,416
Fruitvale tract	218,720	75,030	159,227	13,813
Low service—				
Pacific Building Company		3,845,506		3,209,877
Granada tract	853,295		488,244	55,451
City of San Diego*				*22,897,583
Flume—				
Hawley pipe line	10,954,287		14,771,087	
Cresson flume	2,660,898		3,393,112	
Hillsdale flume	1,990,257		2,713,806	
Lakeside flume	4,709,979		6,053,776	
Lakeview flume	2,690,057		3,217,729	
Totals	43,966,712	7,298,959	56,890,958	30,135,484

*Sales to city of San Diego January 1, 1915, to February 18, 1915, total 8,389,400 cubic feet (or 62,761,101 gallons).

In presenting these tables, Mr. James Armstrong, one of the Railroad Commission's hydraulic engineers, drew attention to the fact that the segregation into irrigation and domestic use is of doubtful value in many cases, particularly with reference to the tracts which are changing from irrigation to domestic use. The segregation as presented by Mr. Armstrong was made by the Cuyamaca company in accordance with its interpretation of its rules and regulations, all water supplied to tracts of one-half acre or larger, except wholesale domestic water, being considered as supplied for irrigation.

TABLE II.

Water Sold at Retail for Domestic Consumption.

Consumption, cubic feet, domestic	El Cajon avenue low service				Kensington Park			
	1913		1914		1913		1914	
	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.
0 to 540	35	10,855	149	44,609	426	124,736	686	148,282
540 to 1,000	28	21,476	149	101,855	291	228,550	523	294,928
1,000 to 5,000	17	26,197	64	93,211	181	271,300	217	284,409
5,000 to 100,000	11	243,740	19	347,446	7	58,400	7	53,624
Totals	91	302,268	381	587,121	905	682,986	1,433	781,243

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TABLE II—Continued.

Water Sold at Retail for Domestic Consumption.

Consumption, cubic feet, domestic	Normal Heights				El Cajon avenue high service			
	1913		1914		1913		1914	
	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.
0 to 540	3,411	819,186	3,257	876,304	117	27,945	128	32,875
540 to 1,000	562	420,600	1,171	846,572	69	62,808	48	37,856
1,000 to 5,000	202	369,665	427	572,731	26	41,309	27	54,045
5,000 to 100,000	13	96,800	9	79,673			2	43,418
Totals	4,188	1,706,251	4,864	2,375,280	212	132,062	205	168,194

TABLE II—Continued.

Water Sold at Retail for Domestic Consumption.

Consumption, cubic feet, domestic	Company's line on main flume			
	1913		1914	
	T.M.	Cu. ft.	T.M.	Cu. ft.
0 to 540	35	7,047	117	26,723
540 to 1,000	14	11,242	31	23,158
1,000 to 5,000	1	2,700	42	78,442
5,000 to 100,000	2	48,600	7	45,210
Totals	52	69,589	197	173,533

TABLE III.

Water Sold at Retail for Irrigation Consumption.

Consumption, cubic feet, irrigation	El Cajon avenue low service				El Cajon avenue high service			
	1913		1914		1913		1914	
	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.	T.M.	Cu. ft.
0 to 540	85	17,468	90	19,989	74	16,519	99	22,119
540 to 1,000	51	59,300	43	32,998	59	41,276	40	35,801
1,000 to 5,000	226	621,684	149	396,692	207	517,211	207	357,927
5,000 to 100,000	345	6,425,909	316	7,835,444	399	8,318,818	363	10,862,519
Totals	707	7,124,361	628	8,285,123	739	8,896,824	709	11,278,366

TABLE III—Continued.

Water Sold at Retail for Irrigation Consumption.

Consumption, cubic feet, irrigation	Company's lines on main flume			
	1913		1914	
	T.M.	Cu. ft.	T.M.	Cu. ft.
0 to 540	11	3,120		
540 to 1,000	9	6,150	1	576
1,000 to 5,000	21	70,942	19	59,9[illegible]5
5,000 to 100,000	338	9,996,763	294	9,901,3[illegible]9
Totals	379	10,046,975	314	9,961,890

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The following table shows a summary of the water sold in 1913 and 1914, under both the wholesale groups and the retail groups, for irrigation and domestic use:

TABLE IV.

Summary of Water Sold, 1913 and 1914.

	1913		1914	
	Irrigation	Domestic	Irrigation	Domestic
Wholesale groups	43,966,712	7,298,959	56,890,958	30,135,484
Retail groups	26,068,160	2,893,156	29,525,379	4,085,371
Grand totals	70,034,872	10,192,115	86,416,237	34,220,855
Combined irrigation and domestic totals	80,226,987		120,637,192	

The word "wholesale" as used in the foregoing tables means the water sold at the Cuyamaca company's master meters and thereafter delivered to the various tracts, communities and companies which act as distributors. In some cases, such tract, community or company has an agent who deals with the Cuyamaca company, while in other cases the company itself collects from the individuals. The word "retail" as used in the foregoing tables refers to water delivered by the Cuyamaca company directly to consumers.

In 1912, 1913 and 1914, the Cuyamaca company was unable to deliver to its consumers the full supply of water to which they were entitled. Irrigation district's Exhibit No. 5 shows that there were shortages in the so-called "low service use" as follows: In 1912 there was a one-fourth supply in January and February; in 1913 there was a one-half supply in January, a three-fourths supply in May, a one-half supply in June and July, a one-fourth supply in August and September and a one-twelfth supply in October, November and December; and in 1914 there was a one-twelfth supply in January and February, a two-thirds supply in September and a one-half supply in October. The Irrigation district's Exhibit No. 6 shows that the same shortages existed during the same period with reference to the so-called "high service use." Irrigation district's Exhibit No. 7 shows that the shortages on the "flume service use" were as follows: In 1911 there was a two-thirds supply in September and no water in October, November and December; in 1912 there was no water in January and February, a five-sixths supply in August, and only a partial supply in September. In 1913 there was a one-half supply in January, a three-fourths supply in May, a one-half supply in June and July, a one-fourth

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supply in August and September and no water in October, November and December; and in 1914 there was no water in January and February, a one-half supply in June, a two-thirds supply in July and September and a one-half supply in October. The data contained in these three exhibits varies somewhat from the testimony of Mr. D. G. Gordon, to be found on pages 1642 to 1644, inclusive, of the transcript, giving the actual shortages by reference to specific dates of the months in which there were shortages, but the data to which I have referred is sufficient to show the fact that during none of the last three years has the Cuyamaca company been able to deliver to its customers the full supply of water to which they were entitled. During October and November, 1913, as well as twenty days in June, 1914, the flume was being lined with rubberoid roofing paper, and hence could not be used for the transmission of water.

I shall now refer to the obligations of this system for the delivery of water. Mr. R. A. Pabst, one of the Commission's assistant auditors, made an extensive investigation, under direction of the commissioner presiding at the hearing, into the so-called water right contracts entered into by San Diego Flume Company, the predecessor of the Cuyamaca company, for the purpose of ascertaining the extent to which San Diego Flume Company had purported to obligate itself to deliver water from its system. In Railroad Commission's Exhibit "A," filed herein, will be found a record of each of these contracts from numbers 1 to 392, inclusive, giving in each case the date of the contract, its number by reference to San Diego Flume Company's contract book, the name of the party contracting with the flume company, the number of inches of water referred to in the contract, the consideration paid and the annual rental or rate. Mr. Pabst prepared and submitted as Railroad Commission's Exhibit No. "B," a list of all contracts grouped according to those taking water from the main flume and those taking from consumers' flumes or pipe lines, as well as the water attached to La Mesa Colony lands, including the contract with La Mesa Development Company, hereinafter referred to. Certain questions arose at the hearing with reference to whether certain water was properly assignable to one flume or to another flume, and Mr. Pabst was instructed to prepare a supplemental report, which has now been prepared and filed in this proceeding. The following table contains a recapitulation of the revised classification of water right contracts by miner's inches, as prepared by Mr. Pabst as of June 1, 1910, being the date on which the water system was purchased by its present owners. This revised table is based on the original detail

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sheets found in the office of the Cuyamaca company and showing the list of contracts outstanding in 1910:

TABLE V.

Water Right Contracts by Miner's Inches on June 1, 1910.

	Regular	Special	Non-consumers	Doubtful	No charge	Indians	Totals
Main flume	88.92	2.25	.50			12.00	103.67
Lakeview flume	13.50			.50			14.00
Lakeside flume	22.00						22.00
Hawley pipe line	43.42						43.42
Hillsdale flume	9.75						9.75
Cresson flume	11.00						11.00
Lemon Grove pipe line	48.375						48.375
Spring Valley pipe line	31.50		2.50				34.00
Pipe line east of stand pipe	63.66	20.50	1.50	.75			86.41
Pipe line west of stand pipe	44.08	29.375	.25				73.705
Floating rights					1.75		1.75
Attached to La Mesa lands					28.00		28.00
Under contract to La Mesa Development Company					149.00		149.00
Totals	376.205	52.125	4.75	1.25	178.75	12.00	625.08

The total number of miner's inches, being 625.08, tallies exactly with the statement of the number of miner's inches covered by outstanding contracts and attached to the agreement dated April 20, 1910, between San Diego Flume Company and James A. Murray, as shown in Railroad Commission's Exhibit "C" and is undoubtedly correct. These so-called water right contracts are of nine different forms, which forms are carefully explained by Commissioner Eshleman in Decision No. 536, rendered on March 28, 1913, in Application No. 118, to which decision reference is hereby made. In so far as necessary for the determination of certain legal questions, these various forms of contract will be further discussed hereinafter.

Railroad Commission's Exhibit No. "G" shows that in June, 1910, the 625.08 miner's inches under contract were distributed under the various forms of contract, as follows:

TABLE VI.

Miner's Inches Specified in Various Forms of Contract in June, 1910.

Under Contract No. 1, 58.51 inches at $65 per inch per annum.
Under Contract No. 2, 403.835 inches at $60 per inch per annum.
Under Contract No. 3, 67.33 inches at $30 per inch per annum.
Under Contract No. 4, 3.62 inches at $45 per inch per annum.
Under Contract No. 5, 9.875 inches at $600 per annum, with excess water at 10 cents per thousand gallons.
Under Contract No. 6, 14.50 inches at $435 per annum, with excess water at 5 cents per thousand gallons.
Under Contract No. 7, 20.00 inches at $576 per annum, with excess water at 6 cents per thousand gallons.
Under Contract No. 8, 2.23 inches at $200 per annum.
Under Contract No. 9, .16 inches at $72 per inch per annum.
La Mesa Colony lands, 28.00 inches at $30 per inch per annum.

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Indians, 12.00 inches. No charge.
To urban tracts, 5.00 inches at 5 cents per thousand gallons with excess over 64,800 gallons per twenty-four hours at 10 cents per thousand gallons.
625.080 inches under contract.

The 403.835 miner's inches referred to under Form No. 2 of contract, include the 150 miner's inches claimed by La Mesa Development Company.

In return for rights of way across Capitan Grande Indian reservation, the predecessors of Cuyamaca company agreed that "the Indians owning or occupying such reservation or reservations shall, at all times during such ownership or occupation, be supplied with a sufficient quantity of water for irrigating and domestic purposes, upon such terms as shall be prescribed in writing by the Secretary of the Interior." Mr. W. S. Post, the Cuyamaca company's chief engineer, testified that the maximum use of water by the Indians in any one day has been 40 miner's inches, but that the average use continuously during nine months has been 3½ miner's inches. He further testified that only about one-tenth of the total acreage in the reservation capable of irrigation has actually been irrigated and that if all the lands capable of tillage in the reservation were irrigated, it would necessitate the use of an average of 35 nine-months miner's inches. It has been impossible to determine why the San Diego Flume Company in June, 1910, placed its obligation to the Indians at 12 miner's inches.

The number of miner's inches obligation shown in Table VI remained constant up to November 1, 1910, at which time 1 miner's inch under the $60.00 rate was canceled and reconveyed to Murray and Fletcher by Mrs. Greenleaf, and 2 miner's inches under the $65.00 rate were canceled and reconveyed to Murray and Fletcher, thus leaving 622.08 miner's inches of water under contracts on February 28, 1912. On March 1, 1912, the Cuyamaca company eliminated from this list the following water:

28 miner's inches at $30, not used but attached to La Mesa Colony.
149 miner's inches at $60, not used but attached to La Mesa Development Company.
12 miner's inches—Indians.

189 miner's inches.

By subtracting from the total 625.08 miner's inches shown by San Diego Flume Company's contract book in June, 1910, the 28 miner's inches attached to La Mesa Colony, 149 miner's inches attached to La Mesa Development Company, 12 miner's inches attached to the Indians, 3 miner's inches reconveyed to Murray and Fletcher, 5 miner's inches originally assigned to the urban tracts of Normal Heights, Bonnie Brae, Teralta Heights and Kensington Park, we find 428.08 miner's inches remaining under contract on March 1, 1912. After Murray and Fletcher acquired the system they entered into a new contract to supply Kensington Park at 25 cents per 1,000 gallons, without regard to the amount needed.

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In making these computations, I do not intend to pass upon the question of the legal obligation of any of these contracts or the right of the Cuyamaca company to eliminate any of the contracts from its list.

In pursuance of a suggestion from the Commission, the Cuyamaca company filed a statement of contracts under each of the forms of contract hereinafter referred to, which statement was marked "Cuyamaca company's Exhibit No. 49." The statement is accompanied by a note reading as follows:

> "This table is submitted pursuant to order of the Railroad Commission, the Cuyamaca Water Company hereby expressly stating that it does not recognize or in any way admit the validity of any of said contracts or the rights of any consumers to claim or demand or receive from the company the amount of water attempted to be secured by said contracts or any other amount of water at all; and further expressly stipulating that the submission of this table shall in no way estop it from contesting the validity of any or all such contracts."

The following table contains, under the forms of contract therein specified, the number of miner's inches which had not been eliminated by Cuyamaca company from its contract book on March 1, 1912, the miner's inches of water actually used in 1915, the maximum monthly use in miner's inches during the last five years, the number of miner's inches which are not used but for which payment is tendered, the number of miner's inches charged at irrigation rates in 1912 but now classified as domestic, and the number of miner's inches canceled subsequent to March 1, 1912.

TABLE VII.

Miner's Inches Specified in Contracts, Used, Not Used, and Canceled.

Contract form number of Railroad Commission Application No. 118	Number of miner's inches, 1912	Irrigation miner's inches of record, 1915	Irrigation miner's inches, maximum monthly use covering 5-year period	Miner's inches difference between columns 2 and 3, representing non-use of water for which payment is tendered	Miner's inches charged at irrigation rates in 1912, now in domestic use	Miner's inches canceled
1	59.965	54.045	53.045	1.000		5.920
2	253.219	239.231	211.687	27.544	7.587	6.431
3	67.33	60.962	57.182	3.780	4.604	1.764
4	3.683	1.653	1.653		1.900	.130
5	9.875				9.875	
6	14.500	14.500	4.900	9.600		
7	20.000				20.000	
8	2.250	2.250	2.250			
9	.160				.160	
10	1.00	1.00	.50	.50		
11	.50	.50	.50			
D 1728	.606	.606	.606			
Totals	433.118	374.747	332.323	42.424	44.126	14.245

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The foregoing table does not include water supplied to El Capitan Indian reservation or to the city of San Diego, but does include the 5 miner's inches supplied or to be supplied to the urban tracts.

It will be noted that the number of miner's inches shown in the preceding table as being outstanding after the contracts which the Cuyamaca company eliminated on March 1, 1912, viz, 433.118 tallies within .038 miner's inches of the 433.08 miner's inches reported by Mr. Pabst on the same basis.

Mr. C. H. Lee, a witness in behalf of the Cuyamaca company, made an exhaustive investigation into the net safe yield of the Cuyamaca company's system, taking as his type year, what he termed an average dry year. The table presented by Mr. Lee, which was introduced as Cuyamaca company's Exhibit No. 23, is based on a detailed mass curve study of the supply available to the system and on the assumption that the supply available to the system during the last twenty years would be available during the coming twenty years but that, instead of the actual operation of the past twenty years an ideal operation is to be carried on during the coming twenty years. Mr. Lee assumed a carrying capacity of the flume amounting to 18 second feet above the South Fork siphon and 22 second feet below this siphon. Based on these assumptions, Mr. Lee reported that the net safe yield of the system, from gravity water, including a net safe yield from the run-off at La Mesa reservoir of 7 nine-months miner's inches, is 312 nine-months miner's inches. By adding to the gravity yield 28 nine-months miner's inches to be pumped from the sands of the San Diego River, Mr. Lee reported that the system, in its present condition, has a net safe yield of at least 320 nine-months miner's inches. He also reported that the system has an installed pump capacity of 230 miner's inches, but after making additional investigations he presented in Cuyamaca company's Exhibit No. 43, his revised conclusions with reference to the amount of water which can be reasonably pumped by means of the present installation. Mr. Lee's revised conclusions in this respect are that with the present installed pumping plants, the system can supply 260 miner's inches during a period of 100 days continuous pumping, 200 miner's inches during a period of 300 days continuous pumping, and 196 miner's inches during a period of 600 days continuous pumping, providing that air lifts or other means of raising water from the wells were installed. Mr. Lee also presented as Cuyamaca company's Exhibit No. 45, a table showing his estimated yield of excess flood waters, assuming a carrying capacity of 18 second feet above South Fork and 22 second feet below South Fork. He concludes that an average of 2,286 acre feet of excess flood water can be produced from the system. If Mr. Lee's computations are correct, it

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follows that the system has a net safe yield from its gravity sources, together with pumping, of 572 nine-months miner's inches if the period of pumping does not exceed 100 days; 512 nine-months miner's inches if the period does not exceed 300 days; and 508 nine-months miner's inches if the pumping does not exceed 600 days and if the necessary air lift or other means of raising water from the wells is installed. These computations are all based on the assumption that the amount of water to be pumped, under Mr. Lee's computations, could be pumped without successful interference from riparian owners whose rights might be seriously interfered with. The evidence shows that an injunction suit on behalf of riparian owners to prevent pumping of water by the Cuyamaca company from the sands of the San Diego River is now pending in the Superior Court of San Diego County.

It is evident, even on Mr. Lee's computations, that if Cuyamaca company is obligated to supply the full number of miner's inches of water specified in the contracts entered into by San Diego Flume Company, that the safe net yield of the system from gravity sources as well as pumping is insufficient to comply with the company's obligations. Mr. Lee testified that no water system in San Diego County can profitably deliver water for irrigation and that the Cuyamaca company's system is no exception to this rule. He testified that he would build no additional dams or reservoirs on this system for irrigation purposes, but that if he had a market for domestic water, he would raise the diverting dam to a height of 70 feet, construct a reservoir at Conejos in the South Fork water shed, build the El Capitan dam to a height of 100 feet and raise the dam at La Mesa reservoir to a capacity of 5,960 acre feet. All engineers agree that the height of La Mesa dam ought to be raised as soon as possible.

I shall now proceed to a discussion of the value of the property of Cuyamaca Water Company herein under consideration under the following heads:

1. Physical structures.
2. Real property.
3. Water rights.
4. Going concern.
5. Original cost, additions and betterments.
6. Special considerations.

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1. Physical Structures.

Estimates of the cost to reproduce new the physical structures of Cuyamaca company herein under consideration and estimates of the depreciated reproduction value thereof were presented on behalf of Cuyamaca company by Fulton Lane, on behalf of the Irrigation district by J. H. Dockweiler, on behalf of the city of San Diego by H. A. Whitney, and on behalf of the Railroad Commission by James Armstrong. A summary of the estimates of these engineers, as they stood on April 12, 1915, was prepared by Mr. James Armstrong and appears in Railroad Commission's Exhibit No. "H." This summary appears in the following table:

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TABLE VIII.

Comparative Tabulation of Valuations by Cuyamaca Water Company, La Mesa District, City of San Diego, and Railroad Commission's Engineers.

	Reproduction cost with overhead				Depreciated reproduction cost			
	Cuyamaca Water Co.	La Mesa district	City of San Diego	Railroad Commission engineers	Cuyamaca Water Co.	La Mesa district	City of San Diego	Railroad Commission engineers
Collection system—								
Cuyamaca reservoir	$46,926	$49,384	$45,901	$46,926	$42,647	$45,751	$31,144	$32,691
Diverting dam	49,199	52,217	44,112	49,025	44,357	36,839	30,680	37,351
Pump station No. 4	565	611	597	565	537	586	567	537
Sand Creek pump station	4,325	3,786	4,310	4,325	4,095	3,631	4,094	4,095
Chocolate pump station	8,247	9,056	6,629	8,247	7,851	8,753	3,905	7,851
Monte pump station	51,007	*38,825	*27,918	43,433	17,212	14,379	4,188	16,109
Total collection system	$160,269	$153,879	$129,467	$152,521	$116,699	$109,793	$74,578	$98,634
Transmission system—								
Main flume—10 sections	$867,670	$840,677	$714,266	$782,515	$471,493	$132,088	$227,813	$305,538
Murray 36-inch supply line	7,117	6,907	6,379	7,117	6,958	6,720	6,187	6,916
La Mesa ditch line	12,948	9,840	8,708	9,722	9,142	6,442	1,740	6,746
Total transmission system	$887,735	$857,424	$729,348	$799,354	$487,593	$145,250	$235,740	$319,200
Distribution system—								
Webster reservoir	$497	$309	$393	$497	$478	$155	$386	$248
Grossmont reservoirs	5,914	4,793	4,564	5,060	5,437	4,482	4,449	4,737
Grossmont pump station	2,171	2,436	2,322	2,171	1,725	1,949	1,744	1,725
Miles reservoir No. 1	3,732	4,024	3,522	3,732	2,687	2,873	2,994	2,687
Miles pump station	2,030	2,031	2,155	2,030	1,196	1,285	1,077	1,196
Miles reservoir No. 2	993	554	1,085	993	715	399	931	715
Murray reservoir	23,051	21,589	14,243	19,885	23,005	21,504	13,674	19,838
Murray Eucalyptus siphon	16,288	14,019	12,835	15,074	15,040	13,645	12,449	14,671

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Eucalyptus reservoir	9,578	11,197	10,471	8,927	8,354	10,039	7,363	7,703
La Mesa reservoir	27,529	27,312	18,757	22,939	26,231	26,641	14,694	21,432
La Mesa dam pump station	2,043	1,747	2,268	2,043	1,734	1,638	1,135	1,734
La Mesa pipe line	14,354	12,958	12,477	14,354	4,364	5,183	3,494	4,364
La Mesa pump station No. 1	5,292	6,835	5,383	5,292	5,024	6,621	5,067	5,024
Distribution mains	167,149	184,639	154,226	167,149	128,527	143,211	113,605	128,527
Total distribution system	$280,621	$294,442	$244,701	$270,146	$224,517	$239,626	$183,062	$214,601
Miscellaneous—								
Old Mission dam cable station	$35	$39	$144	$35	$31	$36	$128	$31
Telephone lines	3,274	3,639	2,721	3,274	3,110	3,200	2,630	3,110
Total miscellaneous	$3,309	$3,678	$2,865	$3,309	$3,141	$3,236	$2,758	$3,141
Totals	$1,331,934	$1,309,423	$1,106,381	$1,225,330	$831,950	$497,905	$496,138	$635,576
Add additional meters, pipe, etc.	11,957			11,957	11,561			11,561
Grand totals	$1,343,891			$1,237,287	$843,511			$647,137

*District and city have not computed cost on latest and most complete schedule.

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In order to complete this table to the date of submission herein, it is necessary to make certain corrections and additions, as follows:

(*a*) *Cuyamaca Water Company.*

The following subtractions and additions should be made:

Subtractions:		
From the reproduction cost of Monte pumping plant	$5,362 00	
From the reproduction cost of the flume	11,000 00	
From the reproduction cost of the distributing mains	3,640 00	
Total subtractions		$20,002 00
Additions:		
To reproduction cost of La Mesa ditch	$1,941 00	
To reproduction cost additional meters	109 00	
To omitted items, Normal Heights shops	532 00	
To omitted item—Materials on hand	20,900 00	
Total additions		$23,482 00

These changes result in a net addition of $3,480.00 to the Cuyamaca company's estimate of reproduction value new, making a total of $1,347,371.00.

Similar corrections should be made in the Cuyamaca company's estimate of reproduction cost less depreciation, resulting in a final estimate of $850,791.00.

(*b*) *Irrigation District.*

To the estimated reproduction cost as estimated by the Irrigation district, there should be added the item of additional meters and pipes, which Mr. Lane estimates at $12,066.00, the Normal Heights shops, estimated by Mr. Lane at $532.00, the materials and supplies on hand, estimated by Mr. Lane at $20,900.00, making a total addition of $33,498.00, and a final estimate of reproduction cost amounting to $1,342,921.00.

The appropriate additions must also be made to the Irrigation district's estimate of depreciated reproduction value, shown on the above table to be $497,905.00.

(*c*) *City of San Diego.*

The city of San Diego did not include an allowance for the Normal Heights shops or for materials and supplies on hand. It will be necessary, in order to present a final estimate, to make the necessary additions to the city's estimate of reproduction value new, amounting to $1,106,381.00. If Mr. Lane's estimate for these two items is accepted, it will result in the addition of the sum of $21,432.00, making a total estimated reproduction value as estimated by the city of San Diego of $1,127,813.00.

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A similar change in the depreciated reproduction value estimate of the city of San Diego would result in increasing the estimate from $496,138.00 to $512,138.00.

(d) Railroad Commission's Hydraulic Department.

To the estimated reproduction cost presented by Mr. Armstrong should be added the necessary allowances for the two omitted items of Normal Heights shops and materials and supplies, thus totalling $1,258,719.00.

A corresponding change in the hydraulic department's estimate of depreciated reproduction cost would result in an increase of the estimate from $647,137.00 to $663,137.00.

Each of the foregoing estimates was prepared with thoroughness and ability and clearly represents a conscientious effort on the part of the respective engineers to reach a fair conclusion as to the estimated cost to reproduce the property new and the estimated depreciated reproduction cost, on the theories respectively adopted by these engineers. The point of greatest difference is the depreciated reproduction value of the flume. In its decision in Application No. 118, the Railroad Commission found as a fact that this flume has entirely passed its useful life and should at once be renewed. Subsequent to the decision, the Cuyamaca company lined the entire flume with rubberoid roofing paper. The testimony seems to show that this roofing may reasonably be expected to last four or five years, and that during this period of time the flume will remain reasonably water tight. Mr. Dockweiler and Mr. Earle, testifying in behalf of the Irrigation district, stated that the flume could not be expected to remain in service longer than four years more. Mr. Lane assumed a remaining life of seven years. Mr. Armstrong assumed that the flume box and trestle could possibly be made to hold together eight or nine years longer, but because of the practically untried use of the rubberoid roofing for flume lining, he estimated an aggregate remaining life of five years.

Mr. Dockweiler, starting with the assumption that the present flume is far more costly than necessary for the uses to which it is devoted, estimated the cost of a substitutional system of equal carrying capacity, consisting of a 36-inch wood stave pipe line, and tunnels of a size sufficient to carry at least 30 second feet of water. He estimated a reproduction cost of the pipe line amounting to $479,002.00 and of the tunnels of $68,221.00, being a total estimated reproduction cost of the substitutional system amounting to $547,223.00. Assuming a remaining life of four years for such wood stave pipe and no depreciation for the tunnels, he reached a conclusion that it would be necessary to subtract the sum of $415,135.00 for depreciation, leaving a present value, under the substitutional system of $132,088.00, as contrasted with

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$471,493.00 estimated by the Cuyamaca company, $305,538.00 estimated by Mr. Armstrong, and $227,813.00 estimated by Mr. Whitney. Without saying that one of these engineers is right and the others wrong, I entirely agree with Mr. Dockweiler that, viewed from the knowledge which we at present have, the construction of this flume was a mistake because it was entirely too large and is very expensive to maintain, and also that whoever takes this system takes it subject to the liability of expending a large sum of money within a few years for the purpose of entirely replacing the flume. That this fact is a very material element to be considered in determining the value of the system will, of course, be admitted.

2. Real Property.

Testimony with reference to the value of the Cuyamaca company's real property was presented on behalf of the Cuyamaca company by Ed Fletcher and on behalf of the Irrigation district by Thomas O'Halloran and C. C. McCutchen. Testimony as to the value of the lands in the Cuyamaca reservoir was also presented on behalf of the Cuyamaca company by C. W. Potter, F. E. Feeler, Frank T. Hill and W. L. Detrick, residents of Julian.

The following table shows the estimates of land value presented by Colonel Fletcher and Thomas O'Halloran:

TABLE IX.

Land Values—Fletcher and O'Halloran.

	Acres	Fletcher	O'Halloran
Cuyamaca reservoir	1,074	$134,250 00	$53,700 00
La Mesa reservoir	83	16,600 00	4,980 00
La Mesa flowage rights			*60 00
Murray Hill reservoir	16.16	4,848 00	1,616 00
Eucalyptus reservoir and right of way	6.43	2,250 00	643 00
Kuehner property	160	†	2,400 00
Poverty Gulch reservoir	120	2,875 00	600 00
Webster reservoir	.14	35 00	200 00
Miles reservoir No. 1	3.68	1,104 00	1,000 00
Miles reservoir No. 2	.42	210 00	200 00
Grossmont reservoir and pumping station	.41	820 00	
Miles pump station	.25	87 50	
Monte pumping plant	7.85	2,147 62	2,355 00
Flume right of way	229.26	‡12,684 75	7,330 00
La Mesa ditch	22.25	5,562 50	1,335 00
Murray eucalyptus siphon	1.19	476 00	
La Mesa pipe line	2.05	615 00	

*Per acre.
†Reservoir, $150 to $200 per acre; Hillside, $5 to $10 per acre.
‡148 acres.

Neither witness testified as to the value of the Kelly ditch right of way, containing 7 acres, and estimated in the Lane appraisal at $50.00 per acre; the land at the diverting dam with flowage rights, consisting

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of 8 acres, and estimated in the Lane appraisal at $100.00 per acre; one acre of land at Sand Creek pumping station, estimated in the Lane appraisal at $100.00 per acre; right of way from flume to Murray Hill reservoir for 36-inch supply line, containing .47 of an acre, estimated in the Lane appraisal at $350.00 per acre; nor the Normal Heights shops, containing .273 acre, and estimated in the Lane appraisal at $2,000.00 per acre.

The flowage rights and land for the keeper's house at the diverting dam, the land on which Sand Creek pumping station is located and the right of way for the main flume from the diverting dam to the northerly line of section 9, in township 15 south, range 2 east, S.B.M., as well as the diverting dam in the south fork of the San Diego River and the right of way for the flume and pipe line through sections 3 and 10, in the same township and range, are all located in Capitan Grande Indian reservation. The fee is in the United States Government and the Cuyamaca company has only an easement.

Mr. Ed Fletcher testified, at page 462 of the transcript, that he valued the lands in the Cuyamaca reservoir at $125.00 per acre, but that since he heard the testimony of the Julian witnesses, he asked that the value be raised to $200.00 per acre. This second value was clearly an afterthought. The Julian witnesses testified that the land was worth about $250.00 per acre for the purpose of raising apples. These same witnesses testified on the hearing in Application No. 118 that the entire 1,675 acres was worth between $100.00 and $150.00 per acre. The net result of their testimony in the present case would be to assign to a portion of the Cuyamaca lands a value considerably in excess of the value of the entire tract, testified to by them in the hearing on Application No. 118. Commissioner Eshleman found on the former hearing that the sum of $144,000.00 would be at least ample and, if anything, in excess of the real value of the 1,675 acres which constitute the entire tract. Colonel Fletcher testified that he had paid between $6,000.00 and $7,000.00 for the 160 acres which constitute the Kuehner property. The La Mesa ditch right of way, on which Colonel Fletcher placed a value of $250.00 per acre, was acquired by condemnation in August, 1914, at $150.00 per acre for three parcels, and $185.80 per acre for the fourth parcel.

3. Water Rights.

In the Lane report, filed as Cuyamaca company's Exhibit No. 5, the Cuyamaca company claimed an item of $999,000.00 for water rights, consisting of 333 nine-months miner's inches, being the net safe yield of the system as determined at that time by Mr. Lee, at $1,500.00 per miner's inch, amounting to $499,500.00, and an additional item in the same amount for 333 nine-months miner's inches as representing an average flood yield which the system was supposed to be able to carry

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Mr. Lane stated that these were not his values and that he was unwilling to testify as to values to be assigned in this proceeding to water rights. When it is remembered that all the water rights owned by the Cuyamaca company were transferred to the company, together with nearly all the lands and physical property now owned by it, all for the sum of $150,000.00, Mr. Lane's hesitancy to stand sponsor for the amount claimed in his report for water rights can readily be understood. The figure thus presented is simply another illustration of the extreme optimism with reference to water right values which a number of utilities have recently shown in cases pending before the Railroad Commission. That water companies can acquire title to water rights and that these water rights may have value is, of course, clear: *San Joaquin and Kings River Canal and Irrigation Company* vs. *County of Stanislaus*, 233 U. S. 454, decided on April 27, 1914. To say that water rights which are acquired together with a water system should thereafter suddenly have a value in excess of six times what was paid for the entire system, including the water rights, is a different thing.

Later in the hearing, the Cuyamaca company presented two distinct lines of testimony with reference to water right values. The first line of testimony was presented by Mr. A. E. Chandler and the second by Mr. W. S. Post, in reliance on data supplied largely by Mr. C. H. Lee.

Mr. Chandler testified that the water diverted through the Cuyamaca system is worth at least $1,000.00 per nine-months miner's inch, regardless of ownership, with certain important qualifications. Mr. Chandler testified that if, after the evidence had been completed, it should appear to the Commission that the irrigation rate which would result would be unreasonably high for the irrigators, then his value of $1,000.00 per miner's inch should be cut down. He testified further that a water right value is an intangible, and that if, after determining the fair value of the physical items of the property and making reasonable allowances for maintenance and operating expenses and depreciation, the rate which would result from these computations would be such that an addition thereto by reason of water right values would result in a rate which the irrigators could not reasonably afford to pay, no allowance should be made for any water right value. Apparently acting on this theory, the Cuyamaca company has claimed no water right value in connection with the water used for irrigation, in so far as concerns the establishment of rates. The Cuyamaca company, however, does claim a value for this same water for the purpose of sale. This position of the Cuyamaca company seems entirely illogical. If a purchaser of this system must pay for these water rights, he would later claim the right to establish rates high enough to yield him a return on the entire purchase price, including the price paid for the water rights. But if the irrigators can not reasonably pay a rate

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including an allowance for water rights, the purchaser would at once find himself in the position of having bought a property the value of which, from his point of view, was depreciated by reason of the fact that he could not charge rates high enough to yield a return on water right value. Hence, it would seem to follow that if the Cuyamaca company can not charge a rate high enough to return a value on any water right, for irrigation purposes, it can not consistently ask that value be allowed for these water rights for purposes of sale.

Mr. Chandler also testified that if a water system is already burdened with servitudes to the public up to the extent of its capacity and that if water rights under a system have been sold to the consumers, they belong to the consumers and the water company is not entitled to receive payment a second time when the company undertakes to sell its system.

Referring now to domestic water, Mr. Chandler qualified his value of $1,000.00 per nine-months miner's inch by saying that if the use of a value of $1,000.00 per nine-months miner's inch should result in a rate for domestic consumers higher than the rate hitherto established by the Railroad Commission to be charged by the city of San Diego for consumers in outside territory under similar conditions, his value of $1,000.00 per miner's inch would have to be pared down accordingly. As the rates charged by Cuyamaca company for domestic consumers are already higher than the rates established by the Railroad Commission to be charged by the city of San Diego for outside domestic consumers, and as these rates charged by the Cuyamaca company can not be reduced, it would follow on Mr. Chandler's analysis, that no value can be allowed to the Cuyamaca company for its water sold for domestic consumption.

Mr. Chandler testified that he had no suggestion to make with reference to the value of the surplus water which the Cuyamaca company claims to have.

The second line of testimony presented by the Cuyamaca company in connection with its claim to values for water rights was presented in connection with its Exhibit No. 51, in which exhibit the following claim is made for an allowance for water right value:

> "Two hundred sixty-three nine-months miner's inches, being 24 miner's inches continuous domestic use plus 239 miner's inches excess flood water at $2,960.00 per miner's inch, being the capitalized value of the difference between a rate of 15.1 cents per 1,000 gallons which is also the cost delivered at the city limits of the San Diego system, and the corresponding cost of the Cuyamaca water which is 10.9 cents per 1,000 gallons, both fixed on capital at 5 per cent interest—$778,480.00."

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The company then adds the following note:

> "The inclusion of no value for water rights on account of water now in use for irrigation for the purpose of rate fixing is not to be considered as a waiver of the right to compensation for such rights for purposes of sale. For the purpose of sale, such additional valuation on account of water rights for water used for irrigation as to the Commission may seem proper is asked."

This valuation is based on a capitalization of the assumed difference in the cost of delivering water at the gates of San Diego between the city of San Diego's system on the one hand and the Cuyamaca system on the other. The entire claim is based on the assumption that it costs 15.1 cents per 1,000 gallons to deliver water at the city limits of San Diego through the city of San Diego's gravity system and that it costs only 10.9 cents per 1,000 gallons to deliver water at the city limits of San Diego through the Cuyamaca company's system. The assumption that it costs the city of San Diego 15.1 cents per 1,000 gallons to deliver water from its gravity system at the gates of San Diego is based on certain computations presented by Mr. Lee in Cuyamaca company's Exhibit No. 44. In determining this cost to the city of San Diego, Mr. Lee used a capital investment of $4,700,000.00, although as a matter of fact, the city of San Diego paid $4,000,000.00 for the system and has expended subsequently only $250,000.00. Mr. Lee assumed an annual allowance for depreciation of $36,777.00, although the Railroad Commission in its Decision No. 1465, rendered on April 28, 1914, in Application No. 547, being the application of city of San Diego for an order establishing the rates to be charged by said city for the delivery of water to consumers outside of the boundaries of said city (Vol. 4, Opinions and Orders of the Railroad Commission of California, p. 902), found that a reasonable allowance for annual depreciation would be $27,826.00. Mr. Lee allowed $66,169.00 as the annual expenditure for maintenance and operation. He took this amount from the records supplied by one of the employees of the hydraulic department of San Diego, without making any check as to whether these sums included amounts properly chargeable to capital expenditures instead of to maintenance and operation and without reference to the fact that the Railroad Commission in its decision on the city of San Diego's application had pointed out the fact that such had been the practice and that a reasonable allowance for maintenance and operation for the impounding system would be $27,500.00. Mr. H. A. Whitney, hydraulic engineer of the city of San Diego, testified that he had made a careful examination of the maintenance and operating expenses actually incurred by the city of San Diego in its impounding system and that his results check very closely with the amount of $27,500.00 allowed

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by the Railroad Commission. Mr. Lee assumed a net safe yield from the city of San Diego's impounding system of only 6.1 million gallons per day when that system shall have been completed. Mr. H. A. Whitney, who has had an intimate knowledge of every detail of the system during the last three or four years, estimated that under the most adverse conditions, it is reasonable to assume that the city of San Diego, with the addition of the Pine Creek dam, which Mr. Lee also included in his computations, would have a net safe yield of 7.5 million gallons daily from the impounding system. It is evident that nearly every assumption used by Mr. Lee in his computation is erroneous, and that no weight whatsoever can be given to it.

In said Application No. 547, the Railroad Commission found that the average cost of the delivery of water at the gates of the city of San Diego from its impounding system is 9.73 cents per 1,000 gallons. This figure must be compared with the 10.9 cents per 1,000 gallons which the Cuyamaca company claims as the cost of delivering water from its system at the gates of San Diego. On this basis, it follows that on the second line of evidence submitted by the Cuyamaca company to prove the value of its water rights, namely, the next available source theory, the water rights of the Cuyamaca company have no value.

After Mr. Lee presented his computations, Mr. H. A. Whitney, hydraulic engineer of the city of San Diego, presented in city of San Diego's Exhibit No. 24, a computation as to the cost of the delivery of water from the city of San Diego's impounding system and also from the pumps now being operated by the city of San Diego in the San Diego River. This exhibit shows that on the basis of 7.5 million gallons delivered daily from the impounding system and 2.75 million gallons delivered daily from the sands of the San Diego River, or a total net safe yield of 10.25 million gallons daily, the cost to the city of San Diego of the delivery of its water in the University Heights reservoir amounts to 8.72 cents per 1,000 gallons. On cross-examination by the Cuyamaca company, Mr. Whitney testified that if the pumped water is entirely eliminated from his computations, the cost of water delivered from the impounding system, on the net safe yield assumed by him and on the basis of four million dollars expended by the city of San Diego for the properties of Southern California Mountain Water Company instead of the $3,500,000.00 found to be their fair value in this Commission's decision on Application No. 547, the cost of water delivered from the impounding system alone at the gates of San Diego is 10.4 cents per 1,000 gallons as contrasted with the Cuyamaca company's cost of 10.9 cents per 1,000 gallons under its system in its present condition and its cost of 10.7 cents when its system is fully developed in accordance with Mr. Lee's suggestions.

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Mr. Whitney also made an estimate of the cost of pumping water from the sands of the San Diego River and delivering it in University Heights reservoir, and found this cost to be 4.62 cents per 1,000 gallons. He also reported that the cost of pumping water from the sands of Tia Juana River and of delivering three million gallons per day at the Lower Otay reservoir at an elevation of 450 feet above the sea level would be 5.26 cents per 1,000 gallons. In order to ascertain the cost of delivering the water at the gates of San Diego, it will be necessary to add to this cost an amount which represents a proper proportion of the cost, operating expenses and depreciation of the Lower Otay reservoir and of the pipe line or pipe lines leading therefrom to the University Heights reservoir.

There was also introduced in evidence a report presented jointly to the city of San Diego and to the Volcan Land and Water Company by Mr. P. E. Harroun, dated August, 1914, in which report Mr. Harroun finds that upon the basis of 4½ per cent interest on the value of the property, together with annual depreciation, maintenance and operating cost and the delivery of 23 million gallons daily, water could be delivered at the gates of San Diego from the properties now owned by Volcan Land and Water Company on the San Luis Rey River at Warner's ranch for the sum of $5.26 per 1,000 gallons. Disregarding for the moment the comparisons of the cost of pumping water from the San Diego River, of pumping water from the Tia Juana River and of bringing water from the properties of Volcan Land and Water Company, and confining our attention entirely to the cost of water delivered by gravity at the city limits of San Diego from the city's impounding system, it appears conclusively, on the Cuyamaca company's own theory, that no substantial value can be assigned to its water rights.

Before leaving this particular branch of the subject, I desire to draw attention to the fact that whether or not the city of San Diego continues to buy from the Cuyamaca company any surplus water, is entirely problematical. With the exception of insignificant amounts sold to ranchers, the Cuyamaca company has never sold surplus water to any customer other than the city of San Diego. No such water was sold to the city for a period in excess of five years between 1906 and 1914. Less than two years have expired since the sale of surplus water to the city has been resumed. Whether the Cuyamaca company will continue to find a purchaser for these surplus waters and whether it will be able to re-establish rights as against the riparian owners owning lands below the diverting dam are matters which largely lie beyond the control of Cuyamaca company and as to which no definite finding can be made on the evidence presented in this proceeding.

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I now desire to draw attention to a further matter having a material bearing on the question as to what allowance should be made in this proceeding for water rights. Reference has already been made to the water right contracts entered into by San Diego Flume Company. I shall now refer to these contracts, under the different type forms, for the purpose of drawing attention to the language therein with reference to the granting of water rights or agreements to supply water.

1. *Form No. 1—58.51 Miner's Inches.*

In this form of contract San Diego Flume Company "for itself, its successors and assigns, doth sell and convey and agree to furnish in perpetuity, for the purpose of irrigation and use upon, and in connection with the following land, situated in the county of San Diego, State of California, to wit (describing land) a water right of and to ( ) inches of water, miner's measure, under a four-inch pressure, being equivalent to 12,960 standard gallons of water in every 24 hours for each and every inch hereby sold, under a four-inch pressure, as aforesaid."

2. *Form No. 2—403.835 Miner's Inches.*

In this form of contract San Diego Flume Company, referred to as the owner of certain water and water rights, and a system for the delivery of water to consumers, "agrees to and does hereby sell and convey to the consumer a water right to ( ) miner's inches of water (being equivalent to 12,960 standard gallons of water in every 24 hours for each and every inch), to be delivered through the distributing system of the party of the first part at a suitable point on its main flume line for deliveries above the flume terminus, or at a suitable point on its main pipe line for deliveries below the flume terminus."

It is provided that "said water right is sold for the use of, and to be appurtenant to, the following described real estate, now owned by the consumer, in the county of San Diego, State of California, to wit: (describing land)."

The contract further provides that "it is expressly understood and agreed that the water right hereby sold shall belong to said described real estate and be used thereon and not diverted therefrom, or used on any other land."

Of the 403.835 miner's inches covered by this form of contract 150 miner's inches are covered by contract entered into on February 7, 1908, between San Diego Flume Company and La Mesa Development Company, in which contract it is provided that in consideration for the sum of $120,000.00 the Flume company "does hereby grant, bargain, sell and convey unto the said party of the second part a water

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right to 150 inches of water, miner's measure, under a four-inch pressure from the center of the opening, being equivalent to 12,960 standard gallons of water in every 24 hours for each and every inch, to be delivered from or through the main flume lines and pipe lines of the party of the first part. It is provided that "said water right is sold for the use of and to be appurtenant to any lands within the flow of the water system" of the Flume company owned by La Mesa Development Company, its successors or assigns. This contract differs from the others of this type particularly in that it provides that La Mesa Development Company may have twenty years within which to attach the water covered by the contract to designated tracts of land. The Flume company agreed that upon the designation of any particular parcel of land it would execute a water right contract attaching a specific quantity of water to the designated parcel of land, such water right contract to be of type No. 2. One miner's inch of water has been attached to land under this contract and is being used but the remaining 149 miner's inches have not been attached. A suit for specific performance of this contract brought by La Mesa Development Company against James A. Murray and Ed Fletcher was filed in the Superior Court of San Diego County on February 16, 1912, and is still pending.

3. *Form No. 3—67.33 Miner's Inches.*

In this form of contract Bryant Howard and R. A. Thomas, trustees of La Mesa Colony tract and San Diego Flume Company, convey a lot or lots in "La Mesa Colony," also a lot or lots in the town of La Mesa "together with the right to take water from the pipes or flumes of said company at the rate of one miner's inch measured under a four-inch pressure (for irrigation and domestic purposes) for said tract." The Flume company agreed to convey water in its pipes or flumes to the edge of said tract "within a reasonable time after the completion of its main flume line to its reservoir about 8 miles east of the city of San Diego, and near said 'La Mesa Colony.'"

On March 1, 1912, the Flume company, claiming that 20 miner's inches under this type of contract had not been applied for "within the reasonable time" after the completion of its main flume line, eliminated this number of miner's inches from its list of outstanding contracts, thus reducing the number to 67.33 miner's inches.

4. *Form No. 4—3.62 Miner's Inches.*

In this form of contract, originally entered into with Teralta Land and Water Company, San Diego Flume Company bound itself as long as the covenants to be performed by the purchaser were kept, "to furnish annually for the lands hereinabove described, and none other,

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water as follows: (specifying number of miner's inches, with certain provisos to which it is unnecessary here to refer)."

5. *Form No. 5—9.875 Miner's Inches.*

In this form of contract entered into between San Diego Flume Company and Columbian Realty Company, the Flume company agrees "to sell, furnish and supply to the party of the second part, not to exceed 9⅞ inches of water, miner's measure (under a four-inch pressure from the center of the opening), being equivalent to 12,960 standard gallons of water in every 24 hours for each and every inch, or total per each 24 hours of 127,980 gallons." The agreement specifies the territory for the use of which the water is agreed to be sold, furnished and supplied. At the time this contract was entered into Columbian Realty Company surrendered certain contracts covering approximately 5.8 miner's inches, a part of which had been secured through Teralta Land and Water Company's contract (Form No. 4). Columbian Realty Company was selling off lots in this territory and was distributing water to its purchasers for domestic purposes. Fairmount Water Company, distributing water to East San Diego, is the successor of Columbian Realty Company under this contract.

6. *Form No. 6—11.5 Miner's Inches.*

In this form of contract, entered into between San Diego Flume Company and El Cerrito Park Water Company, the Flume company agrees "to sell, furnish and supply to said party of the second part not to exceed 14½ inches of water, miner's measure, under a four-inch pressure from the center of the opening or the equivalent of 12,960 standard gallons of water for each 24 hours for each and every inch, or a total per each 24 hours of 187,920 gallons." The agreement provides that the water is to be sold, furnished and supplied for use upon a certain territory specifically described in the contract.

7. *Form No. 7—20 Miner's Inches.*

In this form of contract, entered into between San Diego Flume Company and La Mesa Mutual Water Company, the Flume company "does hereby agree to sell, furnish and supply to the party of the second part" 5 inches of water, miner's measure, with the option on the part of La Mesa Mutual Water Company to take 15 additional inches within the time specified in the contract, which option seems to have been exercised. The contract specifically describes the territory in which the water is to be used.

8. *Form No. 8—2.25 Miner's Inches.*

In this form of contract, entered into between San Diego Flume Company and Levi Chase, the Flume company agrees that it "will

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convey to the party of the second part a water right of 2¼ inches of water, miner's measure, under a four-inch pressure, to be taken and used as hereinafter provided, and subject to the conditions usual with said party of the first part in the sale of water rights to other parties."

9. *Form No. 9—.16 Miner's Inch.*

In this form of contract, San Diego Flume Company "agrees to and does hereby sell and convey to the consumer a water right to ____ miner's inches of water (being equivalent to 12,960 standard gallons of water in every 24 hours for each and every inch), to be delivered through the distributing system of the party of the first part at a suitable point on its main line flume for deliveries above the flume terminus, or at a suitable point on its main pipe for deliveries below the flume terminus." The contract further provides that "said water right is sold for the use of, and to be appurtenant to, the following described real estate: (describing real estate)."

The foregoing type forms of contract appear in full in Railroad Commission's Exhibit "E" in this proceeding. Reference has already been made to the rentals to be paid under these various forms of contract and to the fact that in each case consideration was paid to the Flume company for entering into the contract. Reference has also been made to the water which the Cuyamaca company is obligated to supply to the Indians and to the water supplied for domestic use on Normal Heights, Bonnie Brae, Teralta Heights and Kensington Park.

M. C. Healion, president of the San Diego Flume Company at the time of the sale of the property to James A. Murray on June 1, 1910, testified that the Flume company had recognized the obligations of all these contracts up to the time of the sale of the property. The agreement for the sale of the property entered into on April 20, 1910, between San Diego Flume Company and James A. Murray, specifically provides that "said water delivered is sold, subject to all water right contracts hitherto made by the party of the first part with consumers under its water system." It further provides as follows: "It is understood and agreed that there are now in existence contracts to supply water to consumers covering about 625 miner's inches of water at various annual rentals." Attached to the agreement is a statement showing gross earnings as of May, 1910, on existing water right contracts and extra supply and enumerating the water contracts, showing outstanding obligations of 625.08 miner's inches. The deed from San Diego Flume Company to James A. Murray, dated June 1, 1910, provides in part as follows:

> "This property, water system, franchises, easements, et cetera, are sold subject to all water right contracts, or contracts to rent, sell, supply or distribute water hitherto made by the party of the

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first part, whether such contracts refer to water already furnished or hereinafter to be furnished."

The party of the second part "assumes, and agrees to perform all such contracts to the same extent and in the same manner as the party of the first part is now bound to perform the same." The deed further provides as follows:

> "It is further understood and agreed that there are now in existence contracts to supply water covering about 625 miner's inches of water at various rentals."

The agreement dated November 17, 1914, between James A. Murray and Ed Fletcher and La Mesa, Lemon Grove and Spring Valley Irrigation District, hereinbefore referred to, provides, as already indicated, that the property is to be sold and acquired "subject to all water right contracts or contracts to rent, sell, supply or distribute water hitherto made by San Diego Flume Company (formerly the owner of the said water system), whether such contracts refer to water already furnished, or hereafter to be furnished.

All water sold by the Cuyamaca company for irrigation purposes is sold under some one of these contracts. Out of 24 miner's inches of water sold by the Cuyamaca company in 1914 for domestic purposes, Mr. W. S. Post testified that all except 8.3 miner's inches is also supplied under some one of these contracts. These 8.3 miner's inches appear to be supplied to certain portions of Normal Heights, Kensington Park and other territory lying outside of the territory described in any of these contracts.

Reference has already been made to the fact that the San Diego Flume Company received consideration for each of these contracts. In some of the earlier contracts the consideration was either the grant of right of way or the grant of right of way plus the payment of cash. In most cases, however, the company received cash payments ranging from $600.00 to $1,000.00 per miner's inch. The sums usually paid were either $600.00 or $800.00 per miner's inch. After December, 1898, no water rights were sold for less than $800.00 per miner's inch. The evidence seems to show that the San Diego Flume Company received from the sale of water rights in the neighborhood of $368,000.00 in cash, together with rights of way of indefinite value.

In the present proceeding Cuyamaca company takes the position that all these contracts are void and that the company is under no obligation with reference to any of them. The company further takes the position that it will not return the money which was paid for water rights as distinguished from the rentals specified in these contracts and that it will make no allowance for the same. It is unnecessary for me at this time to comment upon the equity of such a claim.

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The Cuyamaca company's position that these contracts are all void is founded upon the principle that a public utility water company has no right to grant preferences to any persons within the area of the territory to the service of which its water has been dedicated. The Cuyamaca company claims that these contracts violate this principle in that they purport to grant to the owners of certain of the lands within the territory to the service of which the company's water has been dedicated rights to the use of the water over and above the rights enjoyed by other land owners by virtue of their status as persons owning land within the territory to the service of which the water has been dedicated. The company relies on a number of decisions of the Supreme Court of this State and also of the Federal courts sitting in California. Chief among these cases are *Hildreth* vs. *Montecito Creek Water Company*, 139 Cal. 22; *Leavitt* vs. *Lassen Irrigation Company*, 157 Cal. 82; *Lassen Irrigation Company* vs. *Long*, 157 Cal. 94; *Boise City I. & L. Co.* vs. *Clark*, 131 Fed. 415; and *Imperial Water Company No. 5* vs. *Holabird*, 179 Fed. 4.

The consumers under this system take the position that these contracts are all valid and enforcible. They rely on a number of decisions in which certain of these very contracts were under consideration by the Supreme Court of this State and by the Federal courts, and in which the contracts were directly or by inference sustained for the purposes of those cases. These cases are *San Diego Flume Company* vs. *Chase*, 87 Cal. 561; *San Diego Flume Company* vs. *Souther*, 90 Fed. 164; *San Diego Flume Company* vs. *Souther*, 104 Fed. 706; *Souther* vs. *San Diego Flume Company*, 112 Fed. 228. In the last case, Judge Ross, in enforcing one of the type No. 3 contracts, bowed to the decision of the United States Circuit Court of Appeals in 104 Federal, although he believed it to be wrong.

These authorities and all the other decisions which seem to bear on the question were elaborately discussed by Commissioner Eshleman in this Commission's decision in Application No. 118, and it is unnecessary to again cover the field.

The difficulty experienced by the courts in passing upon the validity of such contracts arises from the fact that at the time they were entered into the parties apparently had in mind only the ordinary laws of contract and real property and did not realize that an entirely different body of law applies to the rights and obligations of a public utility and its consumers. Particular reliance is placed by the contract holders on section 552 of the Civil Code, enacted in 1875, reading as follows:

> "Whenever any corporation, organized under the laws of this State, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain

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> a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land, on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation."

The consumers rely on this section and on the decisions construing the same in support of their contention that the ordinary rules of real property and of contract obligations apply and that they have secured through their contracts a "perpetual easement" as such easements are known in real property law. Without passing upon the validity of this claim, I desire simply to draw attention to the decision of the Supreme Court of California in *Leavitt* vs. *Lassen, supra.* In this case, Mr. Justice Henshaw, at page 79, says:

> "The fundamental and all important proposition then is this, that a public service water company which is appropriating water under the constitution of 1879, for the purpose of rental, distribution and sale, can not confer upon a consumer any preferential right to the use of any of its water (citing cases)."

Again, at page 90, Mr. Justice Henshaw says:

> "The right of an individual to a public use of the water is in the nature of a public right possessed by reason of his status as a person of the class for whose benefit the water is appropriated or dedicated. All who enter the class may demand the use of the water, regardless of whether they have previously enjoyed it or not."

Referring then to section 552 of the Civil Code, Mr. Justice Henshaw, at page 93, says:

> "Permanent rights in a limited sense, such consumers may acquire. That is to say, having once been supplied by the company, they are entitled to a continuation of such supply, unless their quantum shall be diminished by a shortage for which the water company is not responsible, or a shortage by reason of the increased demand of added consumers. In such cases, the duty of the water company is to supply such water as it has, fairly apportioned between its consumers. If it be conceived that section 522 of the Civil Code is designed to confer upon any particular consumer any especial, permanent and preferential right above what is here stated, that effort, being plainly violative of the constitution, would be held void."

Mr. Justice Henshaw then continues and holds that the same declaration applies to the provisions of the act of March 12, 1885, and the amendment of March 2, 1897.

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If the position of the consumers with reference to the validity of these contracts is correct, and if it be held that perpetual easements on the system have been established thereunder, on which contention it is unnecessary herein to pass, it follows that the Cuyamaca company's system is burdened with all these easements and that the value of the system for the purpose of sale is accordingly diminished to this extent. Under this view, the company having sold these water rights once, can not own them for the purpose of selling them again.

On the other hand, if the consumers are not correct in their contention, it becomes necessary to consider the effect to be given to their transactions with the Flume company, as bearing on the value of the Cuyamaca company's property for the purpose of sale. It has been suggested that these contracts have at least the effect of bringing the lands therein described within the area of the territory for the benefit of which the water is appropriated or dedicated and to establish its status as land permanently entitled to share in the public use. It appears clearly, however, from the evidence in this proceeding, that all these lands were already within the area to which the water appropriated by San Diego Flume Company was dedicated and that it accordingly was unnecessary to pay any consideration to bring these lands within the area within which they already found themselves. The notices of appropriation of water by San Diego Flume Company all show that the lands of all the contract holders were within the area for the service of which the water was appropriated.

On May 28, 1886, San Diego Flume Company filed a notice appropriating all the waters of the San Diego River at the head of Boulder Creek to the extent of 6,000 miner's inches measured under a four-inch pressure. The notice states that the water "is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues as follows: "The places where it is intended to use said water are the city of San Diego, Ex Mission Rancho, and Rancho of El Cajon."

On June 29, 1886, San Diego Flume Company posted a notice appropriating all the waters of the south fork of the San Diego River to the extent of 4,000 miner's inches measured under a four-inch pressure. The notice of appropriation states that "said water is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues as follows: "The places where it is intended to use said water are the city of San Diego, Ex Mission Rancho, Rancho of El Cajon and other places between the point of diversion and the seaboard."

On July 31, 1886, San Diego Flume Company posted a notice appropriating all the waters of Boulder Creek to the extent of 2,000 miner's inches measured under a four-inch pressure. The notice states that

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"said water is appropriated, claimed and intended for irrigation and domestic use and mechanical purposes." The notice continues in part as follows: "The places where it is intended to use said water are the city of San Diego, Ex Mission Rancho and Rancho El Cajon."

The notices of appropriation filed in behalf of Murray and Fletcher after they acquired the property on June 1, 1910, were posted subsequent to the dates of all the contracts herein referred to, but were of similar tenor with reference to the appropriation for public use and the place of intended use.

As all the lands covered by the contracts were already within the area to the service of which the water had been appropriated and dedicated, their owners, if they had understood their legal rights, could have demanded service upon the payment of the established rates: *Price* vs. *The Riverside Land and Irrigating Company,* 56 Cal. 431; *McCrary* vs. *Beaudry,* 67 Cal. 120; *Fellows* vs. *City of Los Angeles,* 151 Cal. 52; *Leavitt* vs. *Lassen Irrigation Company,* 157 Cal. 82; *Byington* vs. *Sacramento Valley West Side Canal Company,* decided by the Supreme Court of California on April 29, 1915.

It is well established now that a water utility has no right to charge a water right in addition to the established rates as a condition precedent to service: *San Diego Land and Town Company* vs. *National City,* 74 Fed. 79, 86; *Lanning* vs. *Osborne,* 76 Fed. 319, 329, 333; *Boise City I. and L. Co.* vs. *Clark,* 131 Fed. 415, 420; *San Joaquin and Kings River Canal and Irrigation Company* vs. *Stanislaus County,* 191 Fed. 875, 891. Whatever question there may have been in this matter has been definitely set at rest in this State by the recent decision of the Supreme Court of California in *Byington* vs. *Sacramento Valley West Side Canal Company, supra,* decided on April 29, 1915.

The question then arises as to what effect can be given to the payments made for these so-called water rights. If these moneys could be recovered by those who paid them or their successors, a serious question might arise as to whether the value of the water system would not be depreciated in the hands of whoever may own it. On the other hand, in the absence of a decision by the Supreme Court of this State holding that these moneys can be recovered, the Railroad Commission would be inclined, in so far as it could, on the facts of this case, to give effect, in equity, to the moneys thus paid and to regard them, in so far as it can do consistently with the establishment of uniform rates and the prevention of discrimination, as advance payments on rates, so that the consumers holding under these contracts will have the normal rates which they otherwise would be compelled to pay, reduced to the extent of reasonable interest on the moneys

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which they have paid. By reason of the inability to collect such rates as otherwise would be collected from these consumers, the value of the water system would of course be, *pro tanto,* depreciated.

From what has been herein said, and necessarily said as bearing on the question of a fair sale price of this property, the consumers under the system who have been using water under their contracts, should not have the slightest fear as to the permanency of their rights to receive water under this system. Having once received water from this system and continued the use thereof, they are entitled, as was held by the Supreme Court of this State in *Leavitt* vs. *Lassen, supra,* "to a continuation of such supply, unless their quantum shall be diminished by a shortage for which the water company is not responsible, or a shortage by reason of the increased demand of added consumers." Realizing the difficulties which might arise from the demand of additional consumers in an area specified in the notices of appropriation larger than the area which can reasonably be served, the Legislature of this State, in 1913, enacted chapter 80, providing in part that whenever the Railroad Commission, after a hearing, shall find that any water company which is a public utility operating within this State has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by such corporation, the Railroad Commission may order and require that no such corporation shall furnish water to any new or additional consumers until such order is vacated or modified by the Commission. Acting under this principle, although prior to the time this particular statute was enacted, the Railroad Commission in its decision in Application No. 118 provided in part that "no additional consumers shall be added to this system except domestic consumers under the terms hereinbefore in this opinion and order set out." As long as the Railroad Commission continues to have jurisdiction over this particular water system it will continue to protect the rights of those who have heretofore enjoyed the use of the water from the system against the taking on of additional consumers for irrigation purposes beyond the extent to which the system can reasonably supply such additional consumers. As far as domestic consumption is concerned, there will be no danger for a long time from additional consumers of this class, for the reason that the Cuyamaca company system, if properly developed, can take care of large additional amounts of domestic consumption.

In its exhibit No. 51, Cuyamaca company also claims an allowance of $250,000.00 for water rights under Permit No. 1 of the State Water Commission of California, issued on March 12, 1914. This permit

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authorizes the appropriation of not to exceed 50 cubic feet per second of Boulder Creek for irrigation and power, and the Cuyamaca company intends to use this water for the generation of power. The evidence does not show that any consideration was paid to the State of California in connection with this appropriation. The Cuyamaca company presents a table of contemplated cost of developing a plant for the generation of hydroelectric energy by means of the water thus appropriated, of total operating and fixed charges, of depreciation and of revenue, and reaches the conclusion that it will secure by this means a surplus profit of $20,000.00, which sum capitalized at 8 per cent, gives a claimed power right value of $250,000.00. This project is so vague, problematical, speculative and uncertain as not to justify the addition of any material sum to the sale price in this proceeding. The evidence shows that only one-half mile of ditch has been completed, that the estimates of construction cost, operating expense and depreciation are purely speculative, and that no contract has been entered into for the sale of power. No estimate of operating and maintenance expenses in connection with this project had ever been made prior to the presentation of the evidence in this case. The case seems to fall clearly within the rule announced by the Supreme Court of this State in *San Diego Land and Town Company* vs. *Neale,* 88 Cal. 50, in which the court, at page 66, says:

> "The condition of the property, the uses to which it may be put, having regard to the existing advantages for making a practical use of the property, and such advantages as may be reasonably expected in the immediate future, are all matters for consideration in estimating the value of the lands (*Boom Company* vs. *Patterson,* 98 U. S. 403); but to attempt to ascertain the value by estimating the cost of works necessary for its use for a particular purpose, the cost of operation, prospective sales and estimated profits, increased demands through growth of population, etc., requires 'a degree of refinement in the measure of values which seems to us totally incompatible with the gross estimates of common life. . . . the gross estimates of common life are all that the court and juries have skill enough to use as a measure of value. All other measures are necessarily arbitrary and fanciful': (*Scarle* vs. *L. & B. B. R. R. Co.,* 33 Pa. St. 44)."

4. Going Concern Value.

The Cuyamaca company also presents a claim for going concern value. That such value must be allowed in proper cases is well established. But when it is remembered that in the present case the Cuyamaca company and its predecessor, the San Diego Flume Company, have been unable for more than three or four years during the entire period of twenty-six years of operation to pay even maintenance and operating expenses, it must be apparent that this system has no very

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great value as a "going concern" in addition to the value of its tangible properties. It must be remembered also that when James A. Murray purchased this property on June 1, 1910, for $150,000, he bought it as a going concern which had been in operation and doing business for some twenty-one years and the purchase price included as one of the elements of the property purchased its value as a going concern.

5. Original Cost, Additions and Betterments.

The agreement of April 20, 1910, by which San Diego Flume Company agreed to sell its system to James A. Murray for $150,000.00, had attached thereto as Exhibit "A," a list of the properties transferred, which property includes nearly all the properties now owned by the Cuyamaca company. The deed dated June 1, 1910, from San Diego Flume Company to James A. Murray conveyed all these properties, including all the water rights owned by the company and its value as a going concern.

The evidence shows that for eight years, from 1900 until 1908, the San Diego Flume Company tried to sell its entire holdings, but without success. In 1908, the lands not used and useful in connection with the operation of the system, being 1,400 acres valued at $30.00 per acre, were segregated from the system and the property was offered for sale at $150,000.00. It was not until 1910 that the company was able to realize this price. Mr. Healion, president of the San Diego Flume Company, testified that the company had been willing for a long time to take $150,000.00, and that it took the first opportunity to sell at that price. I am convinced from the evidence that the sum of $150,000.00 may reasonably be taken as representing the fair value of the property at the time of its sale by the San Diego Flume Company to James A. Murray.

Subsequent to the acquisition of the property by Murray the Cuyamaca company has made numerous improvements as well as acquiring some additional property. Mr. W. S. Post, the company's chief engineer, testified that the principal improvements and additions have been the placing of an additional sideboard on the flume, an increase in the size of the South Fork feeder, the replacement of twelve wooden flumes by steel flumes, the construction of additional bents in the remaining wooden trestles, the construction of a number of concrete conduits, the construction of siphons at Sand Creek, South Fork and Chocolate to replace long and dangerous wooden trestles, the lining of the entire flume with rubberoid roofing paper, an increase in the height of the diverting dam, the construction of an additional pipe line on El Cajon avenue, the deepening and enlarging of the La Mesa ditch and the purchase and better equipment of the El Monte pumping plant property. In addition, certain small reservoirs and pumping

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plants have been constructed by Murray and Fletcher in their individual capacities for the purpose primarily of distributing water to their private land holdings in and about Grossmont and Murray Hill and are now to be permanently added to the water utility system.

Cuyamaca company presented as its Exhibit No. 39, a statement showing the alleged cost of the water system to the Cuyamaca company from June 1, 1910, to January 1, 1915, and another statement marked "Cuyamaca company's Exhibit No. 58," showing the alleged cost of the system from June 1, 1910, to March 1, 1915. Subsequent to the hearing, the company filed a statement showing the alleged cost of the system from June 1, 1910, to April 1, 1915, with an estimate of probable cost to July 1, 1915. These statements are subject to numerous serious objections. The rate of interest of 10 per cent on all moneys expended for construction as well as deficits in maintenance and operating expenses is used throughout these tables. The Cuyamaca company's counsel stated at the hearing that "we thought we would put it high enough and put it up to the Commission." That this rate of interest is too high under the circumstances of this case is too apparent for comment. Further, after allowing interest at the rate of 10 per cent per annum on all the construction costs and all the deficits in operation, the company adds in its Exhibit No. 39 the sum of $150,-230.00, being the gross earnings during the period from June 1, 1910, to January 1, 1915. On this basis the more money a utility earns the larger is the amount as to which the utility is out of pocket. Of course, no such allowance can be made. The company also presents a statement of the "value" of the property acquired by James A. Murray and Ed Fletcher individually and which is to go with the system, totalling $48,947.00. This statement again includes interest at the rate of 10 per cent per annum. It is not a statement of actual cost of the property and hence is not presented on the theory of actual expenditures which is supposed to underlie the exhibit. The values of most of the real property therein contained are in excess even of the values testified to by Colonel Fletcher and materially in excess of the values testified to by Mr. O'Halloran. For instance, the Murray Hill reservoir lands are given a value of $6,335.00 while Colonel Fletcher testified to a value of $4,848.00, and Mr. O'Halloran to a value of $1,616.00. Miles Reservoir No. 1 is given a value of $1,443.00 although Colonel Fletcher testified to a value of $1,104.00 and Mr. O'Halloran to a value of $1,000.00; the Murray Hill-Eucalyptus siphon right of way is given a value of $585.00 while Colonel Fletcher testified to a value of $476.00, and the present value of the Grossmont reservoirs is given as $5,437.00 as contrasted with $4,737.00 estimated by this Commission's hydraulic department. I believe that full justice will be done to the company if

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it be assumed that these properties originally cost, before the addition of interest, $30,000.00 instead of $40,789.00 claimed by the company in this exhibit.

Furthermore, the exhibit contains the full claims of the company for maintenance and operating expenses, although these operating expenses have been shown to include unduly large amounts for salaries of general officers and items properly chargeable to the proposed sale of the property and other items not proper to be included.

Railroad Commission Exhibit No. "F" contains a summary of construction and capital expenditures, as agreed upon between the Commission's auditor and the Cuyamaca company between June 1, 1910, and January 1, 1915, without the addition of interest except an item of $2,531.98 as follows:

TABLE X.

Summary of Constructive and Capital Expenditures, June 1, 1910, to January 1, 1915.

Purchase of physical property of San Diego Flume Company	$150,000 00
Legal and other expense in connection with purchase	592 70
Purchase and collection of unpaid accounts	2,368 04
Purchasing and protecting water rights	3,462 92
Engineering for proposed reconstruction, etc.	2,029 31
Equipment	5,472 52
Interest	2,531 98
Lands and rights of way	3,231 99
Boulder Creek, Conejos, Poverty Gulch and El Capitan reservoirs	10,248 91
Buildings	188 77
Murray Hill reservoir, pipe lines and tunnel	41,788 91
Cuyamaca reservoir	13 10
La Mesa reservoir	98 37
Eucalyptus reservoir	75 00
Diverting dam	12,050 46
Flume construction, including wood flume, steel flume, concrete flume, steel and concrete siphons, lining, etc.	134,980 40
Pipe lines	98,328 25
Meters and services	17,571 09
Pumping plants	30,405 50
Telephone line	2,209 57
Measuring weirs, gauging stations, etc.	1,356 54
Miscellaneous expense	217 90
Casualty insurance	1,163 30
Commissary—net cost	905 40
La Mesa ditch	137 40
Total	$521,428 33

The sums thus expended are distributed over the years 1910 to 1914, inclusive, as follows:

1910	$155,390 32
1911	51,815 20
1912	53,902 63
1913	89,908 33
1914	170,411 85

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In addition to these amounts the Cuyamaca company reports capital expenditures for January, February and March, 1915, amounting to $31,241.00 and estimated additional capital expenditures from April 1 to July 1, 1915, amounting to $2,500.00.

These statements do not include the properties acquired by Murray and Fletcher individually, which properties are to go with the system, and which have hereinbefore been assigned a reasonable cost of $30,000.00 without the addition of interest.

The following table shows the capital expenditures incurred during each year, together with interest thereon, at the rate of 8 per cent per annum from the middle of the year to July 1, 1915:

TABLE XI.

Capital Expenditures, with Interest, June 1, 1910, to June 30, 1915.

1910—Capital expenditures	$155,390 32	
Eight per cent interest for five years	62,156 13	
		$217,546 45
1911—Capital expenditures	$51,815 20	
Eight per cent interest for four years	16,580 66	
		68,395 86
1912—Capital expenditures	$53,902 63	
Eight per cent interest for three years	12,936 63	
		66,839 26
1913—Capital expenditures	$89,908 33	
Eight per cent interest for two years	14,385 33	
		104,293 66
1914—Capital expenditures	$170,411 85	
Eight per cent interest for one year	13,632 95	
		184,044 80
1915—Capital expenditures	$33,741 00	
Eight per cent interest for three months	674 82	
		34,415 82
Properties heretofore owned individually by Murray and Fletcher, assumed cost	$30,000 00	
Interest at 8 per cent for two years	4,800 00	
		34,800 00
Total		$710,335 85

The Cuyamaca Company claims surplus and deficits in earnings over maintenance and operating expenses in the years 1910 to 1915, inclusive, as follows:

TABLE XII.

Earnings vs. *Maintenance and Operating Expenses, as claimed by Cuyamaca Company.*

1910—Surplus in earnings over maintenance and operating expenses	$3,943 00
1911—Deficit in earnings over maintenance and operating expenses	5,818 00
1912—Deficit in earnings over maintenance and operating expenses	11,830 00
1913—Deficit in earnings over maintenance and operating expenses	13,707 00
1914—Deficit in earnings over maintenance and operating expenses	7,604 00
1915—Surplus in earnings over maintenance and operating expenses, January 1 to April 1	3,814 00

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The evidence in this proceeding shows that the Cuyamaca company's maintenance and operating expenses have been unnecessarily heavy. Reference has already been made to salaries paid to general officers and to the inclusion of expenses which are not properly maintenance and operating expenses. As pointed out at the hearing, the expenses for hearings before the Railroad Commission have been abnormally high and far greater than necessary. As typical of this condition, I desire to refer to Railroad Commission's Exhibit No. "J," in which appears the company's claim for maintenance and operating expenses for the year 1914, amounting to $57,902.88. There appears in the same exhibit, Mr. Armstrong's estimate of what would have been reasonable maintenance and operating expenses during this year, amounting to $44,706.19. The only changes of importance are a reduction in the salary of general officers, and the assignment to this year of the proper pro rata of Railroad Commission expenses, which should be spread over a number of years. On the basis of Mr. Armstrong's report, the deficit of $7,604.00 reported by the Cuyamaca company for 1914 is converted into a surplus of $7,693.00 of earnings over reasonable maintenance and operating expenses.

I find as a fact that an allowance of $25,000.00 to cover reasonable deficits in maintenance and operating expenses from June 1, 1910, to July 1, 1915, with interest at the rate of 8 per cent per annum, is reasonable.

Before leaving the question of original cost, with additions and betterments, I desire to draw attention to the fact that the Cuyamaca company is retaining 601 acres of land in the vicinity of Cuyamaca reservoir, which land was testified to by Colonel Fletcher as having a value of about $25.00 per acre, or a total value of $15,025.00.

SPECIAL CONSIDERATIONS.

Before making my finding as to the fair value of the Cuyamaca company's property for the purpose of sale in this proceeding, I desire to draw attention to a number of additional matters which have bearing on the question of value.

The evidence clearly shows that the flume is largely overbuilt and that throughout most of its extent it is from four to six times as large as necessary to carry the water which it has hitherto supplied. The evidence also shows that this excess capacity can not be availed of prior to the necessity of taking down the flume and substituting a more efficient and economical carrier.

The evidence further shows that water properties in and about Grossmont and adjoining lands, which must have cost somewhere in the neighborhood of $50,000.00 and which were constructed primarily for the purpose of serving the lands owned by Murray and Fletcher and being sold by them, serve but a relatively few customers at the present

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time. The total number of customers thus served probably does not exceed two dozen. The revenues to be derived from these customers and those who may be expected to be added within the near future, will be but a small part of the maintenance and operating expenses necessary to serve these customers. That these properties constitute a burden on the system and depreciate its value, is clear.

Attention must also be drawn to the ability of the consumers to pay rates, as bearing on the value of the property. The Cuyamaca company itself, on this principle, has eliminated any value for water rights in so far as concerns the establishment of rates for irrigation. Mr. C. H. Lee, a witness for the Cuyamaca company, testified that there was no future in San Diego County for the irrigation of citrus crops and that San Diego County producers can not compete with the growers in the vicinity of Whittier and Ventura, where lemon crops were claimed by Mr. Lee to be two or three times as great as those produced by consumers under the Cuyamaca company's system. Colonel Fletcher testified that the cost of water under the Cuyamaca company's system will be so high that it can not be used for irrigation purposes under any condition. Nevertheless, 92½ per cent of the water under this system, except surplus waters, is being used for irrigation and the lands to which this water has been applied are entitled to have the continued use thereof.

Finally, I desire to draw attention, in this connection, as bearing on the value of the system, to Colonel Fletcher's testimony that for 26 years this system has been unable to pay even maintenance and operating expenses. This testimony should be modified by the fact that on the basis of reasonable maintenance and operating expenses, the system has probably paid such expenses during three of the last five years.

After a careful consideration of all the evidence in this proceeding, I find as a fact that the fair value of the property of Cuyamaca Water Company, referred to in the contract dated November 17, 1914, between James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation District, and to be transferred by the Cuyamaca company to the Irrigation district, including property to be added to that particularly described in the contract, as hereinbefore set forth, is the sum of $745,000.00. The property as to which this finding is made is described in Exhibit No. 1, which is hereto attached and made a part hereof.

While this amount is in excess of the amount which would be allowed for rate fixing purposes, the public can afford to be generous in taking from the owners of the Cuyamaca company's system their property.

I am of the opinion that Cuyamaca Water Company should be authorized to convey its said property to La Mesa, Lemon Grove and Spring

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Valley Irrigation District at the price herein found to be reasonable, and recommend that the Railroad Commission make its order authorizing such conveyance.

I submit the following form of order:

ORDER.

James A. Murray and Ed Fletcher, doing business under the firm name and style of Cuyamaca Water Company, and La Mesa, Lemon Grove and Spring Valley Irrigation District having filed their petition asking the Railroad Commission to determine the fair value of the property of Cuyamaca Water Company to be transferred to the Irrigation district under contract dated November 17, 1914, and to authorize the conveyance of said property by Cuyamaca Water Company to the Irrigation district at the value thus fixed and determined.

The Railroad Commission hereby finds as a fact that the fair value of the property of Cuyamaca Water Company to be transferred to La Mesa, Lemon Grove and Spring Valley Irrigation District, as described in Exhibit No. 1 attached hereto, is the sum of seven hundred and forty-five thousand dollars ($745,000.00).

Basing its order on the foregoing finding of fact and on the other findings which are contained in the opinion which precedes this order,

It is hereby ordered that James A. Murray, Ed Fletcher and W. G. Henshaw, doing business under the firm name and style of Cuyamaca Water Company, be and the same are hereby authorized to convey to La Mesa, Lemon Grove and Spring Valley Irrigation District, the property particularly described in Exhibit No. 1, which is attached hereto and made a part hereof.

The foregoing findings and order are hereby approved and ordered filed as the findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1915.

EXHIBIT No. 1.

SCHEDULE "A"—REAL PROPERTY.

Parcel No. 1.

Cuyamaca reservoir and grounds at keeper's house.

DESCRIPTION.

All that portion of lots "D," "E" and "G" of the Cuyamaca Rancho in said county as set out in the decree of partition of said rancho recorded in Book 43 of Deeds at page 309 *et seq.* in the county recorder's office of said county, particularly described as follows:

Beginning at a point N. 89° 25′ E. 448.8 feet from corner 6 of said lot "E," thence N. 21° 12′ E. 1,094 feet, thence N. 4° 20′ E. 995.5 feet, thence N. 32° 18′ W. 507.6 feet, thence N. 10° 27′ W. 866.5 feet, thence N. 53° 42′ W. 439 feet, thence N. 2° 52′ W. 141.3 feet, thence N. 40° 6′ W. 536.1 feet, thence N. 69° 26′ W. 193.4 feet, thence N. 65° 11′ W. 671.1 feet, thence S. 37° 52′ W. 309.3 feet, thence

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N. 52° 8′ W. 640.5 feet, thence N. 37° 57′ E. 1.028 feet, thence S. 76° E. 1.043 feet, thence S. 89° 13′ E. 504.8 feet, thence S. 79° 40′ E. 880.7 feet, thence N. 74° 57′ E. 408.5 feet, thence S. 80° 7′ E. 571.4 feet, thence N. 36° 13′ E. 451.5 feet, thence N. 54° 30′ E. 11.21 chains, thence N. 40° 30′ E. 11.97 chains, thence N. 62° 6′ E. 17.88 chains, thence N. 22° E. 13.48 chains, thence S. 41° E. 4.16 chains, thence N. 45° E. 11.82 chains, thence S. 83° 15′ W. 9.47 chains, thence N. 20° 15′ E. 17.68 chains, thence N. 61° 30′ E. 12.73 chains, thence N. 10° 30′ E. 7.80 chains, thence N. 18° 45′ W. 11.74 chains, thence N. 1° 39′ W. 5.53 chains, thence N. 53° 15′ E. 12.35 chains, thence N. 14° 30′ E. 13.03 chains, thence S. 68° 15′ E. 10.30 chains, thence S. 7.50 chains, thence S. 25° 30′ E. 7.87 chains, thence S. 16° 15′ W. 11.66 chains, thence S. 27° 45′ E. 21.67 chains, thence N. 82° 30′ E. 14.01 chains, thence S. 32° 45′ E. 10.45 chains, thence S. 62° E. 6.97 chains, thence S. 26° 15′ W. 7.20 chains, thence S. 33° E. 5.75 chains, thence N. 89° 39′ W. 5.45 chains, thence S. 8.64 chains, thence S. 48° 30′ W. 11.51 chains, thence N. 52° 15′ W. 5.91 chains, thence N. 32° 15′ W. 5.45 chains, thence S. 69° 7′ W. 7.43 chains, thence S. 15° 16′ E. 11.69 chains, thence S. 34° 29′ E. 8.24 chains, thence S. 12° 15′ E. 4.03 chains, thence S. 32° 21′ W. 12.23 chains, thence S. 12° 40′ W. 13.32 chains, thence S. 10° 24′ W. 7.91 chains, thence S. 41° 53′ W. 5.20 chains, thence S. 7° 44′ W. 7.67 chains, thence S. 74° 27′ W. 15.09 chains, thence S. 22′ W. 5.92 chains, thence S. 89° 25′ W. 20 chains, thence N. 22′ E. 5.12 chains, thence N. 41° 25′ W. 7.83 chains, thence N. 58° 8′ W. 6.58 chains, thence N. 28° 15′ W. 5.20 chains, thence N. 15′ E. 4.70 chains, thence N. 26° 46′ W. 2.42 chains, thence N. 75° 15′ W. 6.97 chains, thence S. 57° 30′ W. 2.65 chains, thence S. 22° W. 8.33 chains, thence N. 77° W. 3.03 chains, thence N. 41° W. 4.55 chains, thence S. 73° W. 8.33 chains, thence S. 62° 30′ W. 4.92 chains, thence S. 34° 15′ W. 7.58 chains, thence S. 8° 15′ W. 7.58 chains, thence S. 10° 45′ E. 4.92 chains, thence S. 29° E. 4.55 chains, thence S. 56° 30′ E. 1.79 chains, thence N. 84° 30′ E. 4.05 chains, thence N. 59° E. 7.58 chains, thence N. 86° E. 3.79 chains, thence S. 68° E. 6.97 chains, thence S. 32° 2′ E. 5.30 chains, thence S. 24° 58′ W. 3.03 chains, thence N. 65° 2′ W. 10.61 chains, thence S. 71° 58′ W. 1.21 chains, thence S. 43° 58′ W. 9.09 chains, thence S. 52° 57′ W. 3.99 chains, thence S. 23° 59′ W. 7.77 chains, thence N. 65° 4′ W. 5.70 chains, thence S. 73° 46′ W. 5.07 chains, thence S. 30° 10′ W. 7.14 chains, thence W. 2.58 chains, thence S. 3.02 chains, thence W. 10 chains, **subject to the reversionary interest in favor of R. W. Waterman to the property** described in deed from R. W. Waterman to San Diego Flume Company, recorded in Book 188, page 141 of Deeds, records of San Diego County, California.

Parcel No. 2.

Poverty Gulch Reservoir Site.

DESCRIPTION.

Northeast ¼ of southwest ¼ and N. ½ of southeast ¼ of section 3, township 15 south, range 3 east, S.B.M., containing 120 acres.

Parcel No. 3.

Kuchner property, upon which Chocolate Pumping Plant and El Capitan Reservoir Site are located.

DESCRIPTION.

Southeast ¼ of northeast ¼ of section 7 and S. ½ of northwest ¼ and southwest ¼ of northeast ¼ of section 8, in township 15 south, range 2 east, S.B.M., containing 160 acres.

Parcel No. 4.

Webster Reservoir.

DESCRIPTION.

Block 9 of Villa Caro Heights per map thereof No. 1345 of records of San Diego County, California, containing 0.14 acres more or less.

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Parcel No. 5.

Murray Hill Reservoir.

DESCRIPTION.

All that portion of lot 136 of Murray Hill per map thereof No. 1342 filed in the county recorder's office of San Diego County, California, lying east of a straight line, between the west corner of lot 80 of Murray Hill and the west corner of lot 125 of Murray Hill, and containing 15.4 acres more or less.

Parcel No. 6.

Park Reservoir (also known as Miles Reservoir No. 1).

DESCRIPTION.

The Park Reservoir site and the reservoir built thereon situate in lots 1 and 2 block 29, El Cajon Heights, as per license survey map No. 50, records of San Diego County, and more particularly described as follows, to wit:

Commencing at the southwest corner of lot 4, block 29, El Cajon Heights, thence south 70° 52′ 30″ E. along the northeast line of the county road 178 feet; thence N. 79° 5½′ E. along said county road 1150 feet; thence continuing N. 79° 5½′ E. 16.1 feet to the point of beginning of the traverse of said reservoir; thence N. 10° 57′ E. 548.8 feet; thence N. 17° 11′ W. 100.5 feet; thence N. 32° 11′ W. 50 feet; thence N. 29° 8′ E. 100 feet more or less to the southerly line of the San Diego flume right of way; thence along said southerly line S. 60° 52′ E. 472 feet; thence S. 32° 45′ W. 216.5 feet; thence S. 8° 15′ W. 263 feet more or less to the northerly line of said county road; thence along said northerly line of said county road S. 79° 3½′ W. 200 feet to the point of beginning, containing 3.42 acres more or less.

Parcel No. 7.

Eucalyptus Reservoir.

DESCRIPTION.

That portion of lot 4 in section 17, township 16 south, range 1 west, S.B.M., in the county of San Diego, State of California, more particularly described as follows:

Commencing at a point 541 feet N. 75° 36′ E. from the southwest corner of said lot 4, thence N. 75° 36′ E. 60 feet to corner No. 1, thence N. 71° 6′ E. 163.2 feet to corner No. 2, thence N. 88° 1′ E. 25.9 feet to corner No. 3, thence S. 79° 29′ E. 143.5 feet to corner No. 4, thence S. 66° 23′ E. 106.9 feet to corner No. 5, thence S. 58° 41′ E. 177 feet to corner No. 6, thence N. 3° 3′ E. 70.7 feet to corner No. 7, thence N. 45° 17′ W. 101.6 feet to corner No. 8, thence N. 52° 51′ W. 280.2 feet to corner No. 9, thence N. 45° 29′ W. 179.4 feet to corner No. 10, thence S. 84° 7′ W. 130.1 feet to corner No. 11, thence S. 72° 33′ W. 238 feet to corner No. 12, thence S. 16° 25′ E. 278 feet to point of beginning.

Also that certain other tract of land bounded and particularly described as follows, to wit:

Commencing at a point 108.2 feet N. 45° 9′ W. from corner No. 9 of the above described tract, thence N. 20° 21′ E. 350 feet, thence N. 69° 39′ W. 110 feet, to east side of right of way of San Diego Flume Company, thence S. 30° W. 344 feet along east side of said right of way, thence N. 84° 7′ E. 52 feet, thence S. 45° 29′ E. 71.2 feet to point of beginning.

Parcel No. 8.

La Mesa Reservoir.

DESCRIPTION.

That portion of La Mesa Colony in the Rancho Mission of San Diego, according to the map thereof filed in the county recorder's office of said San Diego County, September 4, 1901, and numbered 876 of the maps filed in said office, particularly described as follows:

Beginning at a point 855 feet N. 36° 32′ E. of the northwest corner of the southwest ¼ of section 13, township 16 south, range 2 west, S.B.M., at a stake set in the stone mound, thence N. 36° 32′ E. on boundary line of lot 19 of Rancho Mission of

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San Diego, according to the partition map thereof on file in the office of the clerk of the Superior Court of the county of San Diego, California, and also on file in the office of the recorder of said county, which boundary line of lot 19 of said Rancho Mission is as marked and delineated on said amended map of La Mesa Colony, to the corner of said lot 19, which lies west of the north boundary of lot 196 of said La Mesa Colony, thence east on the north boundary of said lot 19 of said Ex Mission Rancho to the northwest corner of said lot 196 of La Mesa Colony, thence south, southerly and southeasterly along the westerly line of said lot 196 of La Mesa Colony and along the southerly boundary line of lots 195 and 194 of said La Mesa Colony, and continuing along the westerly and northerly boundary lines of the county road, as marked on said amended map of La Mesa Colony, to the easterly line of lot 157 of said La Mesa Colony, thence north on the east boundary line of said lot 157 of La Mesa Colony to the northeast corner thereof, thence west on the north boundary line of said lot 157 to the curved boundary line on the west side thereof, thence southwest, southerly and southeasterly along said curved west boundary line of said lot 157 to an intersection of said line with the section line, thence east on the south boundary line of said lot 157 to the southeast corner thereof, thence southwesterly along the boundary line of the county road as shown on map of La Mesa Colony to a point where said road deflects west, thence along said road following the deflection of the same around the north side and west side of lot 155 of said La Mesa Colony to a point where the south line of said lot 155 protruded across the county road is intersected, thence along the northerly boundary of said county road, following the detour thereof to a point where a line drawn parallel with and 190.7 feet at right angles southwesterly from La Mesa dam intersects the west boundary line of said county road, thence N. 60° 45′ W. parallel with said La Mesa dam, 847.5 feet to the point of beginning.

Parcel No. 9.

Monte Pumping Plant.

DESCRIPTION.

Beginning at the intersection of the northerly line of Julian avenue, and the east boundary line of El Cajon Valley Company's land as shown on map 289, filed in the office of the county recorder of said San Diego County December 30, 1886, which point is 40.33 feet north of the intersection of the center line of Julian avenue and said boundary line; thence north 1,173.5 feet along said boundary line to the San Diego River; thence N. 60° 31′ W. 57 feet; thence S. 1,248 feet to the northerly line of said Julian avenue; thence N. 48° 3′ E. along the line of Julian avenue to place of beginning.

Beginning at a point on the east boundary line of El Cajon Valley Company's land as shown on said map 289, 1,213.83 feet north of the intersection of the center line of Julian avenue and said boundary line; thence north along said boundary line 500 feet; thence N. 60° 31′ W. 57 feet; thence S. parallel to said boundary line 500 feet; thence S. 60° 31′ E. 57 feet to point of beginning.

Beginning at a point on the northerly line of Julian avenue and 50 feet W. of the point of intersection of the center line of said Julian avenue with the east line of El Cajon Valley Company's land as shown on said map 289; thence S. 48° 3′ W. along the northerly side of said Julian avenue 80.7 feet; thence N. 1,332 feet; thence S. 60° 31′ E. 68.92 feet; thence S. 1,248 feet to northerly line of Julian avenue and place of beginning.

Beginning at the intersection of the southerly line of Julian avenue with the east boundary line of El Cajon Valley Company's lands as shown on said map 289 which point is 40.33 feet south of the intersection of the center line of said Julian avenue and said boundary line; thence along the south line of said Julian avenue S. 48° 3′ W. 190 feet; thence at right angles S. 41° 57′ E. 213 feet to a point on said boundary line 285.4 feet south of the place of beginning; thence north to place of beginning.

Beginning at a point on the east boundary line of El Cajon Valley Company's land as shown on said map 289, 550.73 feet south of the point of intersection of the center line of said Julian avenue and said boundary line; thence west 569.7 feet to the

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southerly line of Julian avenue; thence N. 48° 3′ E. along southerly line of said Julian avenue 574.7 feet; thence at right angles S. 41° 57′ E. 213 feet to point on said boundary line; thence south along said boundary line 225 feet to point of beginning.

Together with wells, pumps, pumping plant, oil tanks, storehouses and all other structures or personal property now situate, lying or stored thereon.

Subject, however, to the reservations and encumbrances of various deeds of record.

SCHEDULE "B."

Rights of Way, United States Rights Granted and Pending, Floodage Rights and Riparian Rights.

No. 1—Right of Way.

Permit issued by United States Department of Agriculture, Forest Service, for a canal upon Boulder Creek; dated July 2, 1914.

No. 2—Right of Way.

Application to United States Department of Agriculture, Forest Service, for final power permit on Boulder Creek, filed June 6, 1914. Temporary permit to proceed with construction issued July 3, 1914; final stipulation signed August 3, 1914.

No. 3.

Contract to occupy lands and right of way for flume within the El Capitan Indian Reservation, with United States Department of the Interior, originally made with the San Diego Flume Company, as recorded in the office of the Commissioner of Indian Affairs at Washington, D. C., per letter from Department of Interior to Commissioner of Indian Affairs, dated September 16, 1892.

No. 4.

Amended right of way for concrete pipe line at Sand Creek over land in the El Capitan Indian Reservation, approved by United States Indian Service June 25, 1913, as per departmental letter of July 29, 1913.

No. 5.

Amended right of way for steel pipe line at South Fork Canyon, over the El Capitan Indian Reservation, granted in 1912.

No. 6.

Application for lands for reservoir purposes and easements for Conejos reservoir, pending; filed with the United States Department of the Interior in May, 1912. Stipulations signed for a payment of $2,600.00 for lands to the Indian Bureau, in 1914.

No. 7.

Permit for use of public land for reservoir purposes in Poverty Gulch reservoir site July 26, 1913.

In southwest ¼ of southeast ¼ and southeast ¼ of northeast ¼, section 3, township 15 south, range 3 east, S.B.M. Approximately 40 acres.

No. 8.

Permit to occupy lands within the El Capitan Indian Reservation for pumping purposes, granted by United States Department of Interior, dated September 12, 1913.

No. 9.

Right of way for the San Diego flume from the west boundary of El Capitan Indian Reservation to the Eucalyptus reservoir, traversing section 12, township 15

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south, range 1 east, El Cajon Rancho, sections 17 and 18 of township 16 south, range 1 east, through section 24, township 16 south, range 1 west and through section 17, township 16 south, range 1 west.

No. 10.

Right of way for La Mesa ditch and pipe line through section 17, township 16 south, range 1 west and through La Mesa Colony to La Mesa reservoir.

No. 11.

A general right of way for pipe lines through all lots in La Mesa Colony.

No. 12.

Franchise of the county of San Diego granted December 22, 1913, as per resolution of the board of supervisors, upon El Cajon avenue, Monroe street, Monroe way, Isabella street, Ramona street and Lincoln street.

No. 13.

Franchise for pipe line granted by the city of La Mesa upon El Cajon avenue by ordinance dated December 26, 1913.

No. 14.

Franchise for pipe line granted by the city of East San Diego upon El Cajon avenue dated February 9, 1914.

No. 15.

The lease of parcel of land for pumping station in the northwest corner of lot "K," La Mesa Colony.

No. 16.

Easements and rights of way acquired by condemnation proceedings in the Superior Court in an action of *Murray & Fletcher* vs. *La Mesa Development Company*, judgment rendered on July 30, 1914.

No. 17.

Floodage rights over lands in La Mesa reservoir, to a maximum height of reservoir of 100 feet granted by Junipero Land and Water Company to San Diego Flume Company May 14, 1887, and recorded in Book of Deeds 99, page 466, records of San Diego County, California.

SCHEDULE "C."

PHYSICAL STRUCTURES AND IMPROVEMENTS.

No. 1.

DAMS USED IN THE OPERATION OF THE WATER SYSTEM AS FOLLOWS:

The Cuyamaca dam.
The diverting dam upon the San Diego River.
The Eucalyptus dam located at the end of the flume.
The Murray Hill dam.
The La Mesa dam.

No. 2.

CONVEYING SYSTEM.

Flume, siphons, tunnels and conduits 33 miles in length, constituting the San Diego flume, and flume known as South Fork feeder.

No. 3.

PUMPING PLANTS DESCRIBED AS FOLLOWS:

Pumping Plant No. 1.—The pumping plant known as No. 1 is located at the corner of Victoria street and Ramona avenue, in La Mesa Colony.

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Pumping Plant No. 2.—East 10 acres of southwest ¼ of northeast ¼ of section 8, township 15 south, range 2 east, S.B.M., and right of way for pipe line over lands of Robert Alvord in northwest ¼ of southeast ¼ of said section 8, to the flume of Murray & Fletcher; including pumping plant, wells and pipes on said lands.

Pumping Plant No. 3.—Pumping plant known as Plant No. 3 is located upon El Capitan Indian Reservation by permit of United States Department of Interior, located as follows:

In the southwest ¼ of southwest ¼ of section 22, township 14 south, range 2 east, S.B.M., whence southwest corner of said section 22 bears from center of said pumping plant house S. 38° W., 1,000 feet approximately; also wells and suction pipe lines occupying a strip of land 25 feet wide extending from center of said pumping plant house N. 45° W., 400 feet approximately, and a discharge line occupying a strip of land 5 feet wide extending from said S. 40° E., 350 feet, approximately to the flume of Murray & Fletcher.

No. 4.

DISTRIBUTING PIPE LINES AS FOLLOWS:

The city of El Cajon system partly installed and under construction.

The Grossmont Park system, consisting of a reservoir in lot 469 and a reservoir in lot 449 in Grossmont Park, subdivision No. 3, and a reservoir in lot 21 and a reservoir near lot 75 of Grossmont Park subdivision No. 1; all pipe lines connecting these reservoirs and other distributing lines laid upon the private ways within these subdivisions up to and including meters of the consumers and the pipe line known as the Helix pipe line.

The water system in the streets of Murray Hill.

The water system in the streets of Hawley Heights.

The 36-inch pipe line connecting the flume and Murray Hill reservoir.

The 24-inch pipe line connecting Murray Hill and Eucalyptus reservoirs.

The ditch and pipe line known as La Mesa ditch connecting the flume and La Mesa reservoir.

The 24-inch redwood pipe connecting La Mesa reservoir with the main distributing pipe at the corner of Victoria street and Ramona avenue, in La Mesa Colony.

Wood stave pipe supplying North La Mesa, approximately 8,000 feet long.

The main distributing system beginning at the Eucalyptus reservoir and running thence along El Cajon avenue, through the cities of La Mesa and East San Diego and all branches owned by Murray & Fletcher, consisting of:

Pipe	Lin. ft.
4 inch riveted steel	7,500
6 inch riveted steel	1,200
8 inch riveted steel	5,000
14 inch riveted steel	15,920
16 inch riveted steel	24,760
3 inch screw casing	5,966
4 inch screw casing	3,296
6 inch screw casing	334
8 inch screw casing	284
10 inch screw casing	350
11 inch screw casing	339
12 inch screw casing	927
1 inch standard screw	9,898
1½ inch standard screw	2,395
2 inch standard screw	88,919
3 inch standard screw	10,042
4 inch standard screw	4,516
4 inch cast iron	1,681
6 inch cast iron	7,422
12 inch cast iron	51

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No. 5.

Buildings as follows:

Buildings at Cuyamaca reservoir, La Mesa reservoir and Eucalyptus reservoir.

Section houses at diverting dam, Chocolate Canyon, Los Coches, Los Coches trestle and section No. 5.

No. 6.

Wagons and tools, now in use by company.

SCHEDULE "D."

WATER APPROPRIATIONS.

No. 1.

Appropriation by San Diego Flume Company of the diverting dam on San Diego River, for 6,000 miner's inches, dated May 28, 1886, and recorded in Book of Water Claims No. 1, page 146.

No. 2.

Appropriation by San Diego Flume Company on south fork of San Diego River, for 4,000 miner's inches, dated June 29, 1886, and recorded in Book of Water Claims No. 1, page 152.

No. 3.

Appropriation by San Diego Flume Company on Boulder Creek (at Cuyamaca reservoir), for 2,000 miner's inches, dated August 4, 1886, and recorded in Book 1, page 159.

No. 4.

Appropriation by B. Otterstedt (assigned to Ed Fletcher) at diverting dam of San Diego River, for 100,000 miner's inches, dated June 1, 1910, and recorded in Book 4 of Water Claims, page 51.

No. 5.

Appropriation by W. E. Keenan (assigned to Ed Fletcher) in the southwest ¼ of section 22, township 14 south, range 2 east, for 50 miner's inches of water, dated June 12, 1914, and recorded in Book 4, page 218 *et seq.* of Water Claims.

No. 6.

Appropriation by L. A. Olsen (assigned to Ed Fletcher) for 500 miner's inches in the northwest ¼ of section 8, township 15 south, range 2 east (El Capitan dam-site), dated June 12, 1914, and recorded in Book of Water Claims No. 4, page 217 *et seq.*

No. 7.

Permit for appropriation of water for power purposes to State Water Commission on Boulder Creek in section 10, township 14 south, range 3 east, for 50 cubic feet per second, filed May 9, 1913, granted March 12, 1914, and recorded in Book of Water Claims No. 4, page 208.

SCHEDULE "E."

SUPPLEMENTAL SCHEDULE.

The following properties referred to in the opinion herein, and added by the Railroad Commission in accordance with provision in contract dated November 17, 1914, between James A. Murray and Ed Fletcher, copartners doing business under the firm name and style of Cuyamaca Water Company and La Mesa, Lemon Grove and Spring Valley Irrigation Company, in accordance with stipulation at hearing:

1. Shops located at Normal Heights, with real property on which they are located.

2. Materials and supplies on hand, including office equipment, supplies, maps, schedules, charts, drawings and other data collected by Cuyamaca company.

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3. Pumping plant No. 4.
4. Miles pumping plant.
5. Grossmont pumping plant.
6. La Mesa dam pumping plant.
7. Telephone lines.
8. Miles reservoir No. 2, with real property on which it is located.
9. Measuring station below diverting dam.
10. Measuring station at Old Mission dam.
11. Boulder Creek weir.
12. Sand Creek cement shed.
13. Meteorological instruments.
14. South Fork cook shack.
15. Right of way for flowage and keeper's house at diverting dam.
16. Kelly ditch and right of way therefor, being a ditch and right of way located above the Cuyamaca damsite and used for the purpose of diverting water into Cuyamaca reservoir.
17. All riparian rights and rights to diversion on and along San Diego River owned and controlled by James A. Murray, Ed Fletcher or William G. Henshaw, as more particularly shown and described in Cuyamaca company's Exhibit No. 30 herein.
18. All pipe, casings and fittings located in El Cajon avenue and installed during the years 1914 and 1915 for the purpose of delivering flood waters of the San Diego River to the city of San Diego.
19. Two hundred sixty-five meters, varying in size from ⅝ inch to 3 inches.

Decisions Nos. 2532, 2533, 2534, grade crossings; not printed. See end of volume.

DECISION NO. 2535.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK OF THE PAR VALUE OF TWO HUNDRED THOUSAND DOLLARS.

Application No. 502.

Decided June 28, 1915.

Applicant, having heretofore been authorized to issue common stock for the purpose of organization and constructing a warehouse in the city of Sacramento, of which stock $1,443.53 was allowed for organization purposes, now finds that such sum is insufficient and is authorized to expend not over $7,600.13 for such purposes, including office expenses.

Frank J. O'Brien, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

SECOND SUPPLEMENTAL OPINION.

In Decision No. 808, dated July 23, 1913, this Commission authorized Sacramento Warehouse Company to issue $170,550.00 par value of its common capital stock. The order permitted the company to sell

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$1,330.00 par value of stock at not less than 90 and to use the proceeds derived from the sale of such stock to pay organization expenses. On May 2, 1914, this Commission issued a supplemental order authorizing applicant to expend for organization purposes, $4,443.53.

Since the issuing of the supplemental order, applicant has encountered difficulties in collecting amounts due on stock subscriptions. In several instances suit had to be brought against the stock subscriber with the result that the attorney's fees have absorbed the greater part of the allowance for organization expenses. Applicant's construction work has also been delayed because of its inability to sell its stock, due to the general financial depression throughout the country. Applicant, however, has been able to negotiate a loan of $50,000.00 from the Sacramento Bank and thus has continued its construction work.

Because of the unavoidable delay in the construction of applicant's building and the necessity of bringing suit to recover stock subscriptions, applicant has found the former allowance by this Commission for organization expenses inadequate. It now asks for a supplemental order allowing it to expend, in addition to the allowance heretofore sanctioned by this Commission, the sum of $3,156.60. The additional amount is to be expended for the following purposes:

Sacramento Bank executing deed of trust	$206 60
General manager's salary, October 15, 1914, to July 15, 1915 (construction account)	2,000 00
Stationery	300 00
Attorney's fees	410 00
Equipment for warehouse	240 00
Total	$3,156.60

Applicant also requests the former order of this Commission to be extended to January 1, 1916.

I am of the opinion that applicant's request should be granted and herewith submit the following form of order:

SECOND SUPPLEMENTAL ORDER.

Section 1 (*b*) of this Commission's order of July 23, 1913, in the above entitled matter is hereby amended so as to read as follows:

> "Sacramento Warehouse Company may issue and sell its common capital stock of the par value of not to exceed $138,890.00 so as to net said company not less than 90 per cent in cash of the par value thereof, and may apply the proceeds only for the purpose of constructing and completing its proposed six-story and basement steel frame concrete warehouse building, to be erected on said lot No. 2 in the block bounded by R, S, Eleventh and Twelfth streets, in the city of Sacramento, and also for the payment of the necessary organization and office expenses, said organization and office expenses not to exceed the sum of $7,600.13."

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Section 4 of said order of July 23, 1913, is hereby amended to read as follows:

"4. This order shall apply only to capital stock issued on or before the first day of January, 1916."

In all other respects said order of July 23, 1913, shall remain in full force and effect.

The foregoing second supplemental opinion and order are hereby approved and ordered filed as the second supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of June, 1915.

DECISION No. 2536.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AUTHORITY TO ABANDON AGENCY AT NELSON STATION, ON THE SACRAMENTO DIVISION.

Application No. 1703.

Decided June 28, 1915.

Southern Pacific Company applies for permission to discontinue its agency at Nelson Station, and an investigation showing that the receipts from such agency and the prospects of future business justifying its continuance, application denied for a period of one year, during which time applicant shall keep a detailed record of its business through this station and, if conditions warrant, the application may then be renewed.

Geo. D. Squires, for Applicant.

Guy R. Kennedy, for Protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of the Southern Pacific Company for permission to discontinue the agency now maintained at the station of Nelson in Butte County, on its Sacramento Division, until sufficient traffic will have been developed to justify the employment of an agent at this point, it being alleged that the amount of business at present transacted does not justify the continuance of an agent.

A public hearing was held at Chico on June 24, 1915, at which time many interested parties were present and the matter is now ready for decision.

The station of Nelson is located on the Sacramento Division of the applicant, Southern Pacific Company, and a station building was

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erected at the time of the construction of the railroad. Agents have been employed and removed at various times and the last removal of the agent was made by the applicant some years ago, in either the years 1906, 1907 or 1908. The year 1913 was one in which a heavy grain and hay crop was raised on the lands in the vicinity of and tributary to the station of Nelson, and to meet the requirements of shippers and other patrons of the company an agent was installed during the month of June, 1913, and has been maintained up to the present time.

Statements filed as exhibits for the applicant at the hearing indicate that the revenue received at Nelson for the period of one year ending March 31, 1915, was derived from the following sources and was in the following amounts:

Passenger.		
Receipts from tickets sold		$1,315 25
Freight.		
Less than carload—received	$932 60	
Less than carload—forwarded	200 15	
Carload—received	872 01	
Carload—forwarded	10,376 73	
Total freight		12,381 49
Total receipts—freight and passenger		$13,696 74

The cost of maintaining Nelson as an agency station for the above period was approximately $962.00. The carload freight business originating at this station consists principally of hay and grain, the adjacent country being devoted to the raising of grain and the land being held in large tracts by a limited number of owners. There is, however, indication that the lands to the south and southwest of Nelson will shortly be subdivided and made available for small ranches of from ten to forty acres and that such land will be more intensively cultivated than when grain was the principal crop. This will be brought about by the completion of an irrigating canal now actively under construction by the Great Western Power Company, and which should be completed and in operation during the present calendar year. The quantity of hay and grain to be shipped from Nelson during the current season, from present indications, will equal and possibly exceed that forwarded during the year 1914, one warehouse having in storage 400 tons of hay ready for shipment and the proprietor of two other warehouses having arranged for the storage and forwarding of some 4,000 tons of grain. There are other smaller shippers in the vicinity of Nelson who have their hay and grain crops to be forwarded and their shipments will be loaded directly into cars and will not pass through either of the three public warehouses.

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In view of the amount of business enjoyed by the Southern Pacific Company at Nelson during the year 1914, the business that will be offered for shipment in the present year, especially as to carloads of hay and grain, and the increased shipments which may be expected by the cutting up of some of the larger holdings south and southwest of Nelson which are made possible by the advent of the new irrigation canal now under construction by the Great Western Power Company, I am of the opinion that the amount of business in sight for the Southern Pacific Company to be handled through its agency at Nelson Station does not justify the discontinuance of an agent at this time, and I therefore, recommend that the agency station be maintained for a period of one year, and that the applicant, Southern Pacific Company, be required to keep an accurate, detailed record of the business transacted at Nelson Station for the period of one year, and also as to the expense of maintaining an agent during such period, and submit same to this Commission.

I hereby suggest the following form of order:

ORDER.

The Southern Pacific Company, having made application to this Commission to discontinue the agency now maintained at its station of Nelson in Butte County on its Sacramento Division, alleging that the amount of business transacted does not justify the maintenance of an agent, a public hearing having been held and the Commission being fully advised in the premises,

It is hereby ordered that the applicant, Southern Pacific Company, continue the maintenance of an agent at its station of Nelson for a period of one year from the effective date of this order; and

It is further ordered that the applicant, Southern Pacific Company, keep an accurate, detailed account of the freight and passenger business transacted at its said station of Nelson and of the expense of maintenance of an agent at such station for a period of one year from the effective date of this order, and submit the same to this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of June, 1915.

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Decision No. 2537.

IN THE MATTER OF THE APPLICATION OF FRANK G. DRUM AND WARREN OLNEY, JR., RECEIVERS OF THE PROPERTY OF WESTERN PACIFIC RAILWAY COMPANY, FOR AN ORDER AUTHORIZING THE REMOVAL OF THE FREIGHT AND PASSENGER STATION AT LATHROP, SAN JOAQUIN COUNTY.

Application No. 1692.

Decided June 28, 1915.

Applicant applies for and is granted permission to remove its station buildings from Lathrop to a point a little over a mile west, known as Garrison, the greater portion of its business in this vicinity originating at the latter point, and also as it proposes to continue maintaining a sidetrack and receiving and delivering freight at Lathrop as heretofore.

Allen P. Matthew, for Applicant.

Report of the Commission.

Gordon, *Commissioner.*

This is an application of the receivers of the property of the Western Pacific Railway Company for permission to remove the station heretofore maintained at Lathrop in San Joaquin County to a point approximately 1.12 miles westerly and to establish at such point a new station to be known as Garrison. A public hearing was held at Stockton on June 22, 1915, at which hearing all interested parties were present and the matter is now ready for decision.

The station of Lathrop is located in San Joaquin County on the Western division of the Western Pacific Railway and is located 9.9 miles east of the station of Lyoth and 6.7 miles west of the station of Ortega. At the time of the construction of the Western Pacific Railway, a station building for the handling of the freight and passenger business originating at or destined to this point was erected by the company but the station building was not opened for the use of the patrons of the company, nor has an agent ever been maintained at Lathrop. The station of Lathrop has, therefore, served the public and the patrons of the Western Pacific Railway as a non-agency station.

It is now proposed to move the station building from Lathrop to a new location 1.12 miles west, and to establish a new station to be known as Garrison, and also to install an agent at the new station. The proposed new station of Garrison will be a more convenient location for the majority of the patrons of the Western Pacific Railway as there is a greater settlement of the adjacent lands than exists in the vicinity of the station at Lathrop. There is also a large irrigation district known as the

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South San Joaquin Irrigation District, comprising approximately seventy thousand acres, which is now being developed, the ditches and other structures being completed and the water to be available for irrigation in the immediate future.

At the hearing of this case there was no opposition to the proposed removal of the station and the attorney for the applicant stated that it was not the intention to abandon the station of Lathrop as a non-agency station, that the sidetrack at such point would be available for the shipment and delivery of carload freight, that less than carload shipments would be received and delivered, that passengers would board and leave trains, all in the same manner that has heretofore been customary in as much as Lathrop has always been a non-agency station since the commencement of the operation of the Western Pacific Railway, and while a station building was erected at Lathrop it has never been opened for the use of the public and there has never been an agent at this point, the business of the station having been conducted as a non-agency station at all times.

In view of the above facts the petition of the applicants renders necessary only the approval of this Commission as to the removal of the station building from its location at Lathrop to the proposed new location at Garrison, at which latter point the building is to be used as a station for the transaction of the freight and passenger business of the applicants and where an agent is to be installed.

I, therefore, recommend the following form of order:

ORDER.

Frank G. Drum and Warren Olney, Jr., receivers of the property of the Western Pacific Railway Company, having made application to this Commission for permission to remove the station of Lathrop in San Joaquin County to a point approximately 1.12 miles west of Lathrop and to establish at such point a new station to be known as Garrison, a public hearing having been held and the Commission being fully advised in the premises, and it further appearing that the convenience of the public heretofore served by the station of Lathrop will not be interfered with in that it is proposed to continue Lathrop as a non-agency station for the receipt and delivery of freight, both carload and less than carload, and for the use of passengers wishing to board or leave the trains of the applicant at that point,

It is hereby ordered that the applicants, Frank G. Drum and Warren Olney, Jr., as receivers of the property of the Western Pacific Railway Company, be and they hereby are authorized to move the station building heretofore located at Lathrop in San Joaquin County on the Western Division of the Western Pacific Railway Company to a point approximately 1.12 miles west of Lathrop, such point being known as Garrison

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and at which an agency station is to be established and located in the station building, the removal of which is hereby approved by this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of June, 1915.

DECISION NO. 2538.

CALIFORNIA CENTRAL CREAMERIES

vs.

WELLS FARGO & COMPANY.

Case No. 307.

Decided June 28, 1915.

Complainant attacks the rates of defendant express company on butter and cream between certain San Joaquin Valley points, San Luis Obispo and Los Angeles and asks reparation in the sum of $4,568.75, and the rates having been adjusted in connection with a prior order of this Commission with which this case was consolidated, and it now appearing that complainant has no just grounds upon which it may be awarded a refund of amounts heretofore paid, complaint dismissed.

Gavin McNab and *Oliver B. Wyman,* for Complainant.

E. S. Pillsbury, for Defendant.

REPORT OF THE COMMISSION.

SUPPLEMENTAL OPINION.

The complaint of California Central Creameries alleges that the rates charged by Wells Fargo and Company for the transportation of cream between points within the State of California are unjust and unreasonable, and also, that the rates charged by Wells Fargo and Company for the transportation of butter between Lemoore, Hardwick, Riverdale and San Luis Obispo to Los Angeles, are unjust and unreasonable. The complaint prays that the Commission fix just and reasonable rates in lieu of the rates alleged to be unjust and unreasonable, and also, to make an award of reparation in the sum of $4,568.75, to be paid to complainant by Wells Fargo and Company.

This case was consolidated for hearing with Case No. 122, *In the matter of the schedule of tariff of rates and charges of Wells Fargo*

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and Company, this being an investigation on the Commission's own motion into the reasonableness of all the rates of said company within the State of California; Case No. 279, *Merchants' and Manufacturers' Association of Los Angeles* vs. *Wells Fargo and Company and American Express Company*, and Case No. 312, *The County of Orange* vs. *Wells Fargo and Company*. After a thorough investigation the Commission made its order on August 1, 1913, in all of these proceedings, finding the rates of Wells Fargo and Company within the State of California to be unjust and unreasonable and prescribing just and reasonable rates to be charged by the said company within the State of California. With certain modifications made by supplemental orders in these consolidated proceedings, the rates fixed by the Commission to be charged by Wells Fargo and Company within the State of California will become finally effective on or before August 31, 1915.

The orders so far made in this proceeding, however, deal only with the question of the unreasonableness of the rates of the defendant company, the question of reparation in this particular proceeding being left for a supplemental order.

The question of the power of the Commission to award reparation was fully considered in the opinion and order made on June 25, 1915, issued in the consolidated proceedings in Case No. 596, *Steiger Terra Cotta and Pottery Works* vs. *Southern Pacific Company*; Case No. 669, *California Pottery Company* vs. *Southern Pacific Company*, and Case No. 672, *N. Clark & Sons* vs. *Southern Pacific Company*. The Commission there announced that one seeking an award of reparation must show, not only that he has paid an unreasonable or discriminatory rate, but also, that he has been damaged by the payment of an unreasonable or discriminatory rate. In the present proceeding there is absolutely nothing in the record to show that California Central Creameries is entitled to an award of reparation. It appears, at least in the case of the shipments of cream, that it was the practice for the party selling cream to California Central Creameries to bear the express charges. In so far as butter is concerned, the rates which the Commission has ordered Wells Fargo and Company to charge within the State of California do not, in their final form, contain any reduction in the rates theretofore in effect on butter shipped between the points involved in this complaint. The complainant, accordingly, has made out no case for reparation on shipments of butter. For these reasons, the complaint of California Central Creameries, in so far as the same contains a prayer for reparation, must be dismissed.

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We submit the following form of supplemental order:

SUPPLEMENTAL ORDER.

This case having been regularly heard and the Commission having heretofore made its order therein, in so far as the complaint questions the reasonableness of the rates of Wells Fargo and Company, and it appearing that in so far as the complaint contains a prayer for reparation, the complaint must be dismissed.

It is hereby ordered that the complaint in this proceeding, in so far as the same seeks reparation, be, and the same is hereby, dismissed without prejudice.

The foregoing supplemental opinion and order are hereby approved as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of June, 1915.

DECISION No. 2539.

IN THE MATTER OF THE RATES AND SERVICE OF WESTERN STATES GAS AND ELECTRIC COMPANY IN SACRAMENTO, SAN JOAQUIN, EL DORADO, AMADOR AND CALAVERAS COUNTIES, STATE OF CALIFORNIA.

Case No. 590.

Decided June 29, 1915.

REPORT OF THE COMMISSION.

Western States Gas and Electric Company having filed rates, rules and regulations for electric service applicable to the territory involved in this proceeding, being an investigation by the Commission upon its own motion, and it appearing, based on the information now available, that said rates, rules and regulations are reasonable,

It is hereby ordered that above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 29th day of June, 1915.

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DECISION No. 2540.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO ABANDON AND REMOVE TOILET FACILITIES AT ATHERTON.

Application No. 1717.

Decided June 28, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

It appearing to the Commission that its consent is not needed as sought in this application,

It is hereby ordered that this application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 28th day of June, 1915.

DECISION No. 2541.

IN THE MATTER OF THE APPLICATION OF CITY OF SANTA MONICA FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO SANTA MONICA WATER COMPANY FOR ITS LAND, PROPERTY AND RIGHTS.

Application No. 1563.

Decided June 30, 1915.

City of Santa Monica applies under section 46, of the Public Utilities Act for an order of this Commission establishing the price to be paid for the property of the Santa Monica Water Company, and after a review of the evidence tendered the sum of $402,500.00 is established as a fair and reasonable price to be paid for such property.

The water company has acquired by donation a number of small distributing systems constructed by real estate companies for the purposes of serving new territory they were promoting, such territory being at present sparsely settled and the revenues derived therefrom being insufficient to cover cost of operation, and though in establishing a proper value for this water system, such items must be allowed, good business judgment requires that conditions surrounding their acquisition and operation must be given consideration.

The water company claims an allowance covering all deficits incurred during the period June 1, 1905, to December 31, 1914, including interest thereon at 8 per cent.

Held, That courts and commissions have rarely made allowances for development periods in excess of five years and though an allowance will be made for going concern in this proceeding, the claims of the water company can not be allowed, for if followed out the more money a utility lost the more valuable it would become.

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Victor R. McLucas and *John Mellen,* for City of Santa Monica.

Goudge, Williams, Chandler & Hughes, by *H. J. Goudge,* for Santa Monica Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding to fix and determine the just compensation to be paid by city of Santa Monica for land, property and rights of Santa Monica Water Company, hereinafter referred to as the Water company, a public utility, engaged in the business of selling water for domestic and municipal purposes in the city of Santa Monica, Los Angeles County. This proceeding is brought under the provisions of section 47 of the Public Utilities Act.

The petition of the city of Santa Monica herein alleges, in effect, that the city is a municipal corporation, duly organized and existing; that the city has a population of approximately 12,000; that the inhabitants derive their water for domestic use from various wells and springs in and around the city; that the water furnished to the city and the inhabitants thereof is supplied by various private water companies; that during the last five years the city has experienced a rapid growth; that by reason of this growth it has been and is difficult for the owners of these various water distributing systems to make such extensions, additions and replacements as are and will be necessary to give adequate and efficient domestic water service; that the city council deems that the public interest and convenience of the city of Santa Monica demand the acquisition and construction of a municipal water system for the purpose of furnishing to the people of Santa Monica water for domestic use; that the city of Santa Monica intends to acquire each of said water systems by eminent domain; that the necessary ordinance preliminary to the filing of this proceeding has been duly passed and that the city attorney was directed therein to prepare the necessary proceedings requesting the Railroad Commission to fix a valuation on the property of the different water companies now distributing water to the people of Santa Monica for the purpose of purchasing and acquiring all of said water distributing systems for and on behalf of the city; and that as full and complete a description of the properties of the Water company used in the distribution of water in the city as petitioner has been able to secure is attached to the petition and marked "Exhibit D." The petitioner prays that the Railroad Commission arrive at and fix a valuation of "all the properties of said water company, used in furnishing water to the city of Santa Monica, for domestic uses."

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Attached to the petition and marked "Exhibit A" is a copy of Special Ordinance No. 586, declaring that the public interest and necessity of the people of the city of Santa Monica demand the acquisition of a municipal water system, and directing the city attorney to institute and prosecute before the Railroad Commission such proceedings as are necessary to cause this Commission to fix and determine the just compensation to be paid by the city for the properties of each of the water companies supplying water in Santa Monica, including Santa Monica Water Company.

A demurrer to the Railroad Commission's jurisdiction herein interposed by the water company, was overruled.

Public hearings in this proceeding were held in Santa Monica on April 28, 29 and 30, and May 18 and 19, 1915. Briefs have been filed and this proceeding is now ready for decision.

Mr. F. E. Lee, the water company's auditor, testified that the property has a value of $577,005.00. The water company, in its briefs, claims a final value of $545,547.23. The city, in its brief, claims a value of from $237,299.52 to $276,761.32.

The petition, as already stated, alleges that it is the intention of the city of Santa Monica to acquire the water distributing system of Santa Monica Water Company and asks the Railroad Commission to fix and determine the just compensation to be paid for "all the properties of said water company, used in furnishing water to the city of Santa Monica for domestic uses." The city having discovered, after conferences with representatives of the water company, that certain of the property listed in said Exhibit "D" is not used and useful in furnishing water to the city of Santa Monica for domestic purposes and that certain other property owned by the water company is used and useful for such purpose, permission was granted to the city at the hearing to file an amended inventory to conform with the allegations of the petition with reference to the property which the city intends to acquire. At the hearing, counsel for the water company and for the city stipulated that the Railroad Commission should, in this proceeding, fix and determine the just compensation to be paid by the city for the property acquired by the water company up to April 1, 1915.

The water at present distributed by the water company in Santa Monica is pumped from four wells which are located at the Arcadia pumping plant grounds, in Sawtelle. These are 14-inch wells. Two have a depth of 260 feet and the other two a depth of 280 feet. Formerly, the water company also pumped water from a pumping plant on Tenth street, in Sawtelle, but this plant is no longer used. The testimony also refers to a well 338 feet deep, in block 62, Artesian tract, Sawtelle, also known as the Springs grounds, but no water has been used by the water company from these grounds during the last three or

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four years. A small stream of artesian water still flows on this property but it is not used in the water company's system. The four wells on the Arcadia pumping plant grounds now being pumped by the water company were drilled in December, 1910, less than five years ago.

The water company uses two reservoirs, the one known as the Twenty-sixth street reservoir, having a capacity of 1,005,000 gallons, and the other, known as the Olivette reservoir, having a capacity of 1,000,000 gallons. The water company also uses three small receiving basins. In general, the water company's distributing system lies in that part of Santa Monica which is north of Colorado avenue.

The water company reports that in 1913 it sold 34,550,810 cubic feet of water, or 54.74 miner's inches continuous flow, and that in 1914, it sold 36,416,200 cubic feet of water, or 57.73 miner's inches continuous flow. The sources of water supplied by the water company in 1914 are reported to have been as follows:

TABLE I.

Sources of Water, 1914.

	Cubic feet	Miner's inches.
Arcadia pumping plant	27,345,700	43.35
Sycamore pumping plant	9,339,300	14.83
Gravity	4,112,300	6.50
Total supplied to system	40,797,300	64.68
Total sales	36,416,200	57.73
Water lost	4,381,100	6.95

The Sycamore pumping plant and the source of gravity supply belong to other parties and are not included in this proceeding. Mr. W. S. Dole, the water company's chief engineer, testified that the wells now being pumped at Arcadia pumping plant have a capacity of 92 miner's inches.

The water company's annual report for the year ending December 31, 1914, shows that it has outstanding first mortgage 5 per cent gold bonds of a total face value of $250,000.00, issued on July 1, 1907, and maturing on July 1, 1937. The water company reports as of December 31, 1914, outstanding notes payable amounting to $129,521.62. The testimony shows that Santa Monica Water Company acquired its water system from Santa Monica Land and Water Company in April, 1905, and paid therefor its capital stock of the par value of $500,000.00 and its bonds of the face value of $250,000.00, which bonds, however, were not issued until July 1, 1907. In water company's Exhibit No. 6, the water company assumes that the value of its physical structures and improvements on June 1, 1905, not including real estate, was

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$156,586.00. There is considerable evidence in the record as to the value of the real estate at the present time. It is safe to assume, from the record, that the value of the entire water system on June 1, 1905, did not exceed the face value of the outstanding bonds, amounting to $250,000.00.

The lands included in the amended inventory and the areas thereof are as follows:

TABLE II.

Lands and Areas.

Block 33, Artesian tract, Sawtelle (Artesian pumping plant property.)	6.847 acres
Block 36, Artesian tract, Sawtelle (Artesian pumping plant property.)	4.652 acres
Block 62, Artesian tract, Sawtelle (Springs grounds.)	23.196 acres
Lot 13, block 2, Orchard tract, Santa Monica (Twenty-sixth street reservoir.)	5.08 acres
Lot in Ethelwyn Manor Heights, tract 2385 (Olivette reservoir site.)	175 x 175 feet
Lot 23, block 56, Artesian tract, Sawtelle	.161 acres
Lot 25, block 56, Artesian tract, Sawtelle	.161 acres
Lot 18, block 56, Artesian tract, Sawtelle	.161 acres
Lot 20, block 56, Artesian tract, Sawtelle	.161 acres
Lot 21, block 60, Artesian tract, Sawtelle	.161 acres
Lot 22, block 60, Artesian tract, Sawtelle	.161 acres

The market value of these lands, as testified to by the water company's witnesses, without considering water developed on any of these parcels, is as follows:

TABLE III.

Lands—Water Company's Witnesses.

Lands	Marsh	Loomis	Hill	Proctor	Van Winkle
Olivette reservoir site	$10,000	$10,000		$10,000	$12,000
Blocks 33 and 36		*2,000		*2,000	*2,500
Artesian tract		*2,500	*$3,000	*2,500	*2,500
Block 62, Artesian tract		*3,000		*2,500	*2,500
Lot 13, block 2, Orchard tract		†500			
Lots 23 and 25, block 56, Artesian tract		†500			
Lots 18 and 20, block 56, Artesian tract		†500			
Lots 21 and 22, block 60, Artesian tract		†500			

*Per acre.
†Each.

Fred E. Stockwell, city assessor of Santa Monica, testified that he adopts a general practice of assessing real property at 60 per cent of its market value, and that in the year 1914, he assessed the parcel 175x175 feet referred to as Olivette reservoir site, at $6,250.00.

Several of the water company's witnesses testified that the existence of developed water on land adds considerably to its value. Several of these witnesses testified that they did not know the extent to which value

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would be added. One testified that, in his opinion, the value of block 62, Artesian tract, was doubled and another testified that, in his opinion, the value of blocks 33 and 36, Artesian tract, was doubled, but that the value of block 62, Artesian tract, was increased only 50 per cent.

Testimony was also presented by the water company showing that there is a need for the use of water in this vicinity for irrigation and that lands with water bring a higher rental than lands without water. This testimony was presented chiefly by witnesses who are engaged in market gardening.

Witnesses in behalf of the city of Santa Monica testified to the market value of lands involved in this proceeding, without considering the value of developed water, as follows:

TABLE IV.

Lands—City's Witnesses.

Lands	Miles	Ross	Steele	Dudley	Boehman
Olivette reservoir	*$2,100 to 2,500				
Blocks 33 and 36, Artesian tract	*1,200 to 1,500	*$1,600			*$1,500 to 2,000
Block 62, Artesian tract	*1,300	*1,500			
Lot 13, block 2, Orchard tract	*1,500		*$2,000	*$1,500	*2,000
Lots 23 and 25, block 56, Artesian tract		†300			
Lots 18 and 20, block 56, Artesian tract		†300			
Lots 21 and 22, block 60, Artesian tract		†300			

*Per acre.
†Each.

Fred E. Stockwell, city assessor of Santa Monica, testified in behalf of the city that he assessed real property at 60 per cent of its market value and that he had assessed lot 13, block 2, Orchard tract, known as the Twenty-sixth street reservoir site, in 1914. While the transcript says that the assessment was $2,500.00 for this tract, the city's Exhibit No. 2, purporting to contain a copy of the 1914 assessment, shows $4,500.00, and I am inclined to think that the figure stated in the transcript must be incorrect.

Henry D. Lasher, city assessor of Sawtelle, testified that he assessed real property at 60 per cent of its market value, and that in 1914, he assessed real property of the water company located in Sawtelle, as follows:

TABLE V.

Lasher's Assessment, 1914.

Block 33, Artesian tract, 6.847 acres	$6,300 00
Block 36, Artesian tract, 4.652 acres	3,600 00
Block 62, Artesian tract, 23.169 acres	20,790 00
Lots 18 and 20, block 56, Artesian tract	220 00 each
Lots 23 and 25, block 56, Artesian tract	220 00 each
Lots 21 and 22, block 60, Artesian tract	200 00 each

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James Armstrong, one of the Railroad Commission's assistant hydraulic engineers, presented the only complete inventory and appraisement which was offered herein. His revised estimate of the reproduction cost and of the depreciated reproduction cost of the water company's physical structures and improvements herein under consideration, as shown by Railroad Commission's Exhibit No. 2, is as follows:

Reproduction cost	$342,725 00
Reproduction cost, less depreciation	283,972 00

Mr. Armstrong listed and appraised the property as it existed on January 1, 1915. Water company's Exhibit No. 10 shows the following summary of capital expenditures incurred by the water company from January 1, 1915, to April 1, 1915:

TABLE VI.

Capital Expenditures—January 1 to April 1, 1915.

Concrete well	$1,536 23
Distributing mains	177 04
Services	261 75
Fire hydrants	90 05
Meters	566 57
Miscellaneous distribution equipment	3 20
General shop equipment	34 83
Miscellaneous construction equipment	163 11
	$2,832 78

The water company presented no complete inventory or appraisal but contented itself by pointing out its agreement with or objections to the conclusions of Mr. Armstrong and by presenting evidence in support of its views with reference to those items as to which it challenged Mr. Armstrong's conclusions. The water company accepted Mr. Armstrong's unit costs, except as hereinafter indicated, and his overhead percentages throughout, but urged the adoption of the sinking fund method of depreciation instead of the straight line method used by Mr. Armstrong.

With reference to paving, Mr. Armstrong included in his appraisal only the paving which was cut through by the water company in laying its mains and services. The amount thus allowed is $2,954.00 for paving inside Santa Monica and $691.00 for paving outside of Santa Monica. The water company expressly accepted this allowance for paving and stated that it would make no claim for additional allowance by reason of paving laid subsequent to the laying of mains and services.

The principal point of difference between Mr. Armstrong's inventory and appraisal and the water company's views are as follows:

1. Unit cost of Arcadia and Tenth street wells.
2. Unit cost of 100-horsepower motors at Arcadia pumping plant.
3. Depth of Tenth street well.

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4. Unit costs of certain pipe, as follows: 2-inch and 4-inch S. S. black pipe; 4-inch, 6-inch, 8-inch, 10-inch and 12-inch O. D. casing pipe and 4-inch cast iron pipe.

5. Unit costs of 1½-inch, 2-inch and 3-inch meters.

6. Unit costs of ¾-inch and 1-inch services.

7. Probable useful life of a portion of the pipe.

8. Probable useful life of meters.

9. Omission of 1,430 feet of 4-inch I. D. casing.

10. Omission of cost of 8-foot concrete well, except equipment.

11. Use of straight line depreciation.

In Railroad Commission's Exhibit No. 2, Mr. Armstrong accepted the water company's estimate of useful life of all the pipe, made an addition for the 1,430 feet of 4-inch I. D. casing theretofore omitted, accepted the depth of the Tenth street well as claimed by the water company and corrected the unit costs of the 1½-inch, 2-inch and 3-inch meters and the 100-horsepower motors.

Mr. W. S. Dole, the water company's chief engineer, presented exhibits showing costs of pipe, meters and services over varying periods of time. The water company also presented evidence with reference to the useful life of meters.

Mr. Armstrong, in his exhibits, made an allowance for the equipment to be used in connection with a certain excavation on the Arcadia pumping plant property, which excavation was referred by the city throughout these proceedings as "one circular excavation, 145 feet deep and 8 feet in diameter, walled with reinforced concrete, located on block 33, Artesian tract," and by the water company as a concrete well. The appropriate allowance for overhead percentage must be added to Mr. Armstrong's estimate for equipment. Mr. Armstrong made no allowance for the excavation itself, stating that the well is not producing water and is shut down, that its value as a water producer is doubtful and that accordingly no allowance was made for the well. The testimony shows that work on this well was started in October, 1912, but that it has not as yet been completed. Mr. Dole testified that the cost, including equipment and overhead, to November 1, 1914, was $37,116.00. There is a sharp conflict in the testimony as to whether this excavation will ever be useful and as to whether, if it should be completed, it will drain water away from the four wells now being pumped on this tract. The water company subsequent to April 1, 1915, drilled and completed a 14-inch well within 30 feet of this excavation. This well is reported to be a good well. Why the water company incurred expenditure in drilling this new well instead of completing the excavation, is not clear. I am inclined to the view that this excavation will ultimately develop water, but the question of the value to be assigned thereto is extremely problematical. An

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allowance will herein be made for this excavation, but it will be discounted by reason of the uncertainty of ultimate success.

The water company presented as Exhibit No. 13 a tabulation headed "Railroad Commission Engineer's Appraisal of the Physical Properties of the Santa Monica Water Company," which tabulation witnesses for the water company testified was Mr. Armstrong's inventory and estimated reproduction cost, with the water company's own estimate of reproduction cost less depreciation on the sinking fund basis. This exhibit shows estimated reproduction cost and depreciated reproduction cost as follows:

Reproduction cost	$364,873 00
Depreciated reproduction cost	331,082 00

Mr. Dole testified that the depreciation of the property, as shown in this exhibit, corresponds very closely with depreciation shown by physical examination of the property. It later developed that water company's Exhibit No. 13 does not represent Mr. Armstrong's inventory and appraisal, for the reason that it does not contain the Twenty-sixth street reservoir, the paving allowance or the equipment of the 8-foot concrete excavation, all of which items are included in Mr. Armstrong's report, and that it does contain certain items which Mr. Armstrong excluded from his report, particularly an excess allowance of $500.00 on the estimated depreciated reproduction value of the Tenth street pumping plant and an allowance of $37,116.00 for the 8-foot concrete excavation. In other words, the exhibit contains a number of items which Mr. Armstrong excluded and omits a number of items which he included.

The water company presented as Exhibit No. 6, a statement of alleged accrued losses, totalling, as reported by the water company, from June 1, 1905, to December 31, 1914, the sum of $93,227.00. The water company worked backward from the assumed value of the physical structures and improvements on December 31, 1914, to secure the assumed value on June 1, 1905. Starting then with the assumed value on June 1, 1905, the water company added each year the additional capital expenditures and then subtracted depreciation to secure the sum on which to start for the next year. Interest is estimated at 8 per cent per annum, and the excess of estimated interest, depreciation and operating expenses over earnings each year is shown. This deficit for the entire period is shown to be $73,401.00. The water company then compounds interest at the rate of 8 per cent per annum on the deficit, concluding that the total accrued losses on the assumptions indicated, amount to $93,227.00.

While a reasonable development cost must be allowed, in cases in which the evidence shows that such allowance is proper, there is, of course, a limit to the extent to which development cost, including early

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losses, with interest thereon, may properly be considered as adding to the value of the property. Otherwise, an enterprise poorly conceived might claim an enormous value by reason of annually recurring deficits. The larger the deficits, the larger would be the value claimed.

The problem in this proceeding is not that of simply reimbursing the water company for its expenditures, with interest thereon. If this were the problem, the Railroad Commission would carefully ascertain what the water company actually paid for its lands, with or without water rights, and would disregard the entire property which has been donated to the water company. The problem here, however, is to ascertain the just compensation to be paid to the water company for the property which is to be taken from it and it is, of course, obvious that this compensation can not be increased indefinitely by the addition of deficits. In cases of this kind, courts and commissions have rarely made allowances for development periods in excess of five years. If deficits continue to recur after the first five years, they seldom add to the value of the property.

The property of the water company to be taken by the city must be valued as a going concern. In this connection, it becomes pertinent to inquire into the water company's financial operations. The annual report for the year ending December 31, 1913, shows an operating revenue of $52,083.65 and operating expenses amounting to $41,715.01, thus leaving $10,368.64 available for interest on the investment and depreciation. The water company made no allowance for depreciation. The annual report shows interest accrued on funded debt amounting to $12,500.00, and other interest deductions amounting to $4,276.11. Certain items for rent deductions are also reported, the conclusion being that a deficit of $8,381.89 was incurred during the year.

The annual report for the year ending December 31, 1914, shows an operating revenue of $50,747.23, and operating expenses of $34,217.17. No amount was set aside for depreciation. The water company reports interest on funded debt amounting to $12,500.00, other interest deductions amounting to $6,343.39, and a deficit for the year of $5,204.02. In its Exhibit No. 6, the water company estimates that $7,625.00 should have been set aside in the year 1914 for depreciation. Subtracting this amount from the sum of $16,530.06, reported to be the excess of operating revenue over operating expenses, leaves only $8,905.06 available for the payment of interest on the investment. If depreciation is not subtracted on the theory that in an enterprise of this kind it may be deferred, there will be available for the payment of interest on the investment the sum of $16,530.06. This sum would yield a return on an investment of approximately $277,500.00, if interest is taken at 6 per cent per annum; $236,100.00, if interest is taken at 7 per cent per annum; and $206,630.00, if interest is taken at 8 per cent per annum.

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The water company insists that regard should not be had to its actual financial operations on the ground that the rates which it has been charging are too low. In another proceeding, now pending before the Railroad Commission, the water company asks that its rates be increased. Attention, however, should be drawn to the fact that the existing rates have been continuously charged by the water company as far back, at least, as the fiscal year 1908–1909. Rates equivalent to those now charged were established by the city council of Santa Monica by General Ordinance No. 48, adopted February 27, 1908, establishing water rates for the fiscal year 1908-1909, and by General Ordinance No. 79, adopted by the city council on February 23, 1909, establishing the same rates for the fiscal year beginning July 1, 1909, as were established by General Ordinance No. 48 for the fiscal year beginning July 1, 1908. Under the provisions of section 1 of article XIV of the constitution of this State, the effect of each of these ordinances was spent at the end of the year for which the rates were therein established. The record in this case shows no attempt on the part of the water company to enjoin the enforcement of the rates established by the city council for the fiscal years 1908–09 and 1909–10, and no attempt subsequent to June 30, 1910, to increase the rates until the water company's rates were attacked during this year in case No. 701, *McCarthy* vs. *Santa Monica Water Company*. In other words, the present rates have been in effect, first through ordinance of the city council of Santa Monica and thereafter through the voluntary act of the water company, for at least seven years.

It is by no means certain that the water company could make such a showing before the Railroad Commission as would justify an increase in rates. It may well be that the Railroad Commission, if it should establish rates for the water company, would find that for any one of a number of reasons, well established in the law of public utility regulation, the water company is not entitled to an increase over the rates which have been charged during the last seven years. Or, if an increase is allowed, it may not be such as to justify anywhere nearly the value which is being claimed by the water company in this proceeding.

There is necessarily a close relationship between the value of the property of a public utility and the rates which it can be allowed to charge. It by no means follows that a public utility property is always worth either the cost to rebuild it or its depreciated reproduction value, either on the straight line basis or on the sinking fund basis, as estimated by engineers. To illustrate, it is possible to imagine a public utility owning a water system which it would cost $100,000.00 to reproduce, but which has been able, through bad management or mismanagement, to secure only half a dozen customers, paying for

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domestic water only. It is fundamental that these few customers could not be compelled to pay a rate high enough to yield a return on the investment, for the reason that, entirely apart from other principles of public utility regulation, a utility can not charge more than the consumer can reasonably be called upon to pay: *San Diego Land and Town Company* vs. *Jasper,* 189 U. S. 439; *Southern Pacific Company* vs. *Bartine,* 170 Fed. 725. Under such circumstances, a person possessed of ordinary business sense would not pay for the property the cost of reproducing it. The property might have a possibility of future development, but the necessity of waiting a number of years before the desired increase in revenue occurred, would necessarily result in discounting the value at present.

The evidence in this proceeding shows that Mr. Armstrong included in his inventory and in his estimates of reproduction cost new and of depreciated reproduction cost, several hundred thousand feet of pipe line which were laid by real estate subdividers in this vicinity and thereafter donated to the water company. These systems lie in sparsely settled territory and produce but little revenue.

The following table, which was introduced as water company's Exhibit No. 8, shows the detail of these donated pipe lines:

TABLE VII.

Detail of Pipe Lines Donated to Santa Monica Water Company.

Tract	Length	Kind	Amount	Depreciation	Depreciated reproduction value	
Brentwood place	4,312	2" S.T.D.	$948	1/20	$901	
	11,025	4" O.D.	4,189	1/20	3,980	
						$4,881
Palisades No. 3	10,058	3½" S.S.	4,023	13/40	$2,715	2,715
Santa Monica canyon	7,093	2" S.T.D.	1,560	2/40	1,482	
	12,801	3" S.T.D.	4,221	2/40	4,012	
	3,089	3½" S.T.D.	1,239	2/40	1,177	
						6,671
Palisades No. 4	11,455	4" S.T.D.	5,727	1/40	$5,584	5,584
Gillette Regent square	18,420	4" S.T.D.	9,210	2/40	8,654	8,654
Ethelwyn manor	2,500	4" O.D.	950	4/40	855	855
Ranch system	704	1" Galv.	91	6/30	73	
	38,271	2" S.T.D.	8,442	10/35	6,030	
	2,709	3" O.D.	813	14/30	434	
	2,314	3½" O.D.	764	13/30	423	
	35,596	4" O.D.	13,526	11/40	9,806	
	15,569	6" O.D.	7,734	10/40	5,801	
	5,200	6" Riv.	2,236	12/25	1,163	
	915	7" O.D.	659	14/40	428	
	9,105	8" O.D.	8,194	9/40	6,350	
						30,518
						$59,878

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The following table, which was introduced as water company's Exhibit No. 11, shows the consumers, consumption and gross income on these donated pipe lines for the year 1914:

TABLE VIII.

Consumers, Consumption and Gross Income on Donated Pipe Lines, 1914.

Consumers	Cubic feet, consumer	Gross Income
Brentwood place—		
Regular (16)	332,800	$477 90
Contractors (1)	21,100	3 60
Gillette Regent square—		
Regular (2)	139,500	157 75
Contractors (5)	54,400	59 95
Palisades No. 3—		
Regular (16)	323,700	456 60
Contractors (2)	111,500	128 10
Palisades No. 4—		
Regular (1)	8,000	13 75
Contractors (5)	99,200	112 55
Ethelwyn manor—		
Regular (4)	10,800	36 65
Santa Monica canyon—		
Regular (22)	845,400	1,053 10
Ranch system—		
Regular (236)	3,046,500	4,759 05
Total		$7,259 00

A study of the last two tables shows that the depreciated reproduction value of these pipe lines alone, as reported by the water company, without considering any other portion of the investment necessary to serve these consumers, varies from about $125.00 per regular consumer under the ranch system, to $1,357.50 for Palisade tract No. 3 and $5,584.00 per regular customer under Palisade tract No. 4. A careful study of the evidence herein seems to indicate that the operating expenses alone in connection with these portions of the water company's distributing system are considerably in excess of the revenue derived, to say nothing of an allowance for depreciation and interest on the investment.

There is, of course, no question but what this property belongs to the water company and that it is entitled to have the same valued in this proceeding.

Good business judgment requires that the facts hereinbefore set forth shall be considered in estimating the value of the property of the water company. A public authority, whether a court or a commission, charged with the responsible duty of determining the fair value of the property to be taken from the water company, must likewise give consideration to these facts to the extent to which they are entitled to receive consideration. It must also be borne in mind, how-

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ever, that the possibility of development in the future may result in a value for public utility property, as is the case herein, in excess of the value which could be allowed by competent public authority for rate fixing purposes.

For the purpose of the discussion herein, reference has been made to only a portion of the evidence presented in this proceeding. It should be distinctly understood, however, that all the evidence has been carefully considered and the weight given to each portion thereof to which it seemed fairly and reasonably entitled.

I recommend the following findings:

FINDINGS.

City of Santa Monica, an incorporated city, having filed with the Railroad Commission a petition setting forth the intention of the city to acquire under eminent domain proceedings, or otherwise, land, property and rights of Santa Monica Water Company, a public utility, and asking the Railroad Commission to fix and determine the just compensation to be paid to Santa Monica Water Company for said land, property and rights, and public hearings having been held, and the Commissioner who heard the evidence having made a personal inspection of the land, wells, pumping plants, reservoirs and a portion of the distributing system of Santa Monica Water Company, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by city of Santa Monica to Santa Monica Water Company for said company's land, property and rights, as described in Exhibit No. 1, which is attached hereto and made a part hereof, is the sum of four hundred and two thousand five hundred dollars ($402,500.00).

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

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EXHIBIT No. 1.

Land, property and rights of Santa Monica Water Company, as follows:

Land.

1. A parcel of land 175 x 175, Ethelwyn Manor Heights, tract 2385, being designated on the official map of said tract as "not a portion of this subdivision," Santa Monica, California.

2. Blocks 33, 36 and 62, Artesian tract, Sawtelle, California.

3. Lot 13, block 2, Orchard tract, Santa Monica, California.

4. Lots 18, 20, 23 and 25 in block 56, Artesian tract, Sawtelle, California.

5. Lots 21 and 22 in block 60, Artesian tract, Sawtelle, California.

Together with all water and water rights owned by Santa Monica Water Company contained in, developed on or appurtenant to each and every the foregoing described parcels of land.

Physical Structures and Improvements.

Items	Quantity
Buildings—	
1. Main pump building, 61′ x 24′ 6″	1
2. Store house, 66 x 27′	1
3. Store house, 25′ x 10′	1
4. Stable, 15′ x 33′	1
5. Toilet septic tank, toilet 9′ 3″ x 11′, tank 19′ x 4′, open part tank 20′ x 5′, tank concrete	1
6. Machine shop, 24′ x 40	1
7. Engineer's dwelling, 30′ x 20′	1
8. Cabin, 10′ x 26′	1
9. Shed, 10′ x 10′	1
10. Fence, 1,380′	1
Wells—	
No. 1, 14″ diameter, double cased	280 lin. ft.
No. 2, 14″ diameter, double cased	260 lin. ft.
No. 3, 14″ diameter, double cased	260 lin. ft.
No. 4, 14″ diameter, double cased	280 lin. ft.
Receiving basins—	
Concrete receiving basin, 30′ x 20′ x 10′ deep	1
Reinforced concrete receiving basin, 44′ x 19′ x 10′	1
Concrete receiving basin, 11′ x 8′ 6″ x 6′	1
Motors and compensators—	
C.W. 100 H.P., 2-speed, 1,470 x 730 R.P.M., 2,200 volts	1
C.W. 100 H.P., 2-speed, 1,470 x 730 R.P.M., 2,200 volts	1
G.E. 20 H.P., 200 volts	1
West. 50 H.P., 725 R.P.M., 220 volts	1
West. 50 H.P., 725 R.P.M., 220 volts	1
together with all accessories.	
Recording watt meter—	
G.E. type E. 4 K.W. 100	1
Switch boards—	
For motors 137901 and 162150	1
5 point, marble back	2
Switch board frame	1
Pumps—	
Jackson-Church 5-stage horizontal centrifugal, with accessories	1
Jackson-Church 5-stage horizontal centrifugal, with accessories	1
Ingersoll-Rand. air comp., 12½″ x 12″, with accessories	1
Ingersoll-Rand. air comp., 12½″ x 12″, with accessories	1
Jackson centrifugal 6″ suction, with accessories	1
Reservoirs—	
130′ diameter 10′ deep, 1,000,000 gallon, reinforced concrete reservoir, known as Olivette reservoir	1
Twenty-sixth street reservoir	1

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Physical Structures and Improvements—Continued.

Items	Quantity
Weir box—	
Concrete	1
Reserve equipment—	
G.E. 20 H.P. motor and compensator	1
G.E. 35 H.P. motor No. 593524	1
G.E. 75 H.P., motor No. 593492	1
Jackson-Church 5-stage vertical centrifugal pump	1
Jackson-Church 6-stage bored well, turbine pump	1
Worthington sinking pump	1
Dean sinking pump	1
Fairbanks-Morse hoisting engine—200′ ½″ steel cable, 2 500-lb. steel buckets, 350′ ⅜″ steel cable	1
G.E. 5 H.P. motor No. 532324, direct connected with centrifugal pump	1
Distribution system—	
1″ S.S. dipped	1,198 lin. ft.
¾″ galvanized	225 lin. ft.
1″ galvanized	2,212 lin. ft.
2″ black, dipped	100,100 lin. ft.
2½″ black, dipped	433 lin. ft.
3″ Standard screw, dipped	17,431 lin. ft.
3″ O.D. casing, dipped	5,172 lin. ft.
3½″ O.D. casing, dipped	2,314 lin. ft.
3½″ Standard screw, dipped	13,156 lin. ft.
4″ Standard screw, dipped	48,842 lin. ft.
4″ O.D. casing, dipped	107,854 lin. ft.
4″ steel riveted, dipped	7,073 lin. ft.
4″ cast iron, dipped	11,724 lin. ft.
4″ I.D. casing, dipped	2,560 lin. ft.
5″ O.D. casing, dipped	1,317 lin. ft.
6″ Standard screw, dipped	5,147 lin. ft.
6″ steel riveted, dipped	1,661 lin. ft.
6″ cast iron, dipped	3,355 lin. ft.
7″ O.D. casing, dipped	915 lin. ft.
7″ Standard screw, dipped	830 lin. ft.
8″ O.D. casing, dipped	41,314 lin. ft.
8″ Standard screw, dipped	4,078 lin. ft.
10″ Standard screw, dipped	796 lin. ft.
12″ Standard screw, dipped	48 lin. ft.
12″ steel riveted, dipped	5,644 lin. ft.
16″ cast iron, dipped	5,040 lin. ft.
16″ steel riveted, dipped	4,265 lin. ft.
Total	406,339 lin. ft.
All valves, gates and fittings attached to the foregoing pipe.	
Services—	
½″	1,080
¾″	1,102
1″	171
1½″	19
2″	45
3″	1
4″	2
Total	2,420

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Physical Structures and Improvements—Continued.

Items	Quantity
Meters—	
⅝″ x ½″ Nash	1,170
⅝″ x ½″ Keystone	42
⅝″ x ½″ Trident	35
⅝″ x ½″ Empire	7
⅝″ x ½″ Worthington	1
⅝″ x ½″ Columbia	1
⅝″ x ½″ Gamon	2
⅝″ x ½″ Union	1
⅝″ x ¾″ Nash	654
⅝″ x ¾″ Trident	16
⅝″ x ¾″ Empire	1
⅝″ x ¾″ Gamon	1
⅝″ x ¾″ King	1
¾″ x ¾″ Nash	43
¾″ x ¾″ Keystone	13
¾″ x ¾″ Trident	7
¾″ x ¾″ Empire	2
¾″ x 1″ Nash	93
¾″ x 1″ Keystone	2
¾″ x 1″ Trident	4
1″ Nash	24
1″ Keystone	1
1″ Lambert	6
1″ Trident	6
1½″ Nash	13
1½″ Keystone	4
1½″ Trident	1
1½″ Worthington	1
2″ Nash	19
2″ Empire	5
2″ Keystone	6
3″ Keystone	1
Total	2,203
Fire hydrants—	
4″ Keystone	33
2″ Crane hydrant heads	25
Piping in yard—	
¾″ galvanized	120 lin. ft.
1″ galvanized	260 lin. ft.
2″ Standard screw, dipped	313 lin. ft.
3″ O.D. casing, dipped	515 lin. ft.
4″ steel riveted, dipped	148 lin. ft.
4″ O.D. casing, dipped	1,716 lin. ft.
6″ O.D. casing, dipped	1,227 lin. ft.
8″ O.D. casing, dipped	570 lin. ft.
10″ O.D. casing, dipped	40 lin. ft.
All pipe and equipment in wells.	
Equipment in machine shop—	
Lathe 21 x 12, Standard Porter lathe and tools	1
Drill press, Champion No. 202 with center shaft	1
Drills for press	All
Drill press, Champion No. 404	1
Forge, stationary, with air connection	1
Forge, Champion, portable	1
Blower, 4″ American, installed	1
Westinghouse 7½ H.P. motor starting, complete	1
Emery wheels, power driven	2
Emery wheels, hand driven	1

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Physical Structures and Improvements—Continued.

Items	Quantity
Main shaft, 3″ diameter 30′ long	1
Wood pulley, 6′ diameter 13″ face	1
Wood pulley, 3′ diameter 7½″ face	1
Wood pulley, 12″ diameter 5″ face	2
Wood pulley, 12″ diameter 17″ face	1
Wood pulley, 36″ diameter 6″ face	1
Wood pulley, 24″ diameter 5″ face	1
Wood pulley, 12″ diameter 3″ face	2
Crane, with 1½ ton hoist	1
Shafting installed and small tools.	
High pressure fire system—	
8″ Standard screw, dipped	411 lin. ft.
8″ O.D. casing, dipped	76 lin. ft.
12″ Standard screw, dipped	50 lin. ft.
8″ quick opening standard valves	5
12″ Standard check valve	1
12″ Quick opening standard valves	1
5″ water relief valve	1
Miscellaneous fittings; freight, hauling, labor.	
Fire system—Arcadia plant—	
Fire hose, pipes and fittings.	
All tools.	
Surveying instruments—	
Transit, level, etc.	
Material on hand in storeroom: Stable and garage—	
Garford auto truck	1
Wagons	2
Single-seated rig	1
Mare	1
Harness	2 sets
General office equipment—	
Safe cabinets	2
Addressograph	1
Envelope sealer	1
Burroughs adding machine	1
Graphotype	1
Number machine	2
Comptometer	1
Office furniture and fixtures.	
Block and wall maps and plans.	
Tenth street plant—	
No. 3 Ames deep well pump, comp. installed	1
10″ belt, 35′ long	1
Foundation and pit 6′ square.	
8′ deep walls, 1′	8 cu.yds.
14″ double cased well	225 lin. ft.
Frame building, 30′ x 15′	1
3,750 feet 6″ steel riveted pipe to Arcadia plant	3,750 lin. ft.

One circular excavation 145 feet deep and 8 inches in diameter, walled with reinforced concrete, located on block 33, Artesian tract, Sawtelle.

Also all items shown on Exhibit No. 10 of water company herein, being summary of the capital expenditures from January 1, 1915, to April 1, 1915.

(Signed out)

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DECISION NO. 2542.

JAMES W. FREEMAN ET AL.

vs.

IRWIN HEIGHTS WATER COMPANY.

Case No. 698.

Decided June 30, 1915.

Complainants allege an inadequacy of service, an unjust charge for meters and excessive rates on the part of defendant water company and petition the Commission to grant such relief as may be deemed proper.

Held, As regards service, particularly adequate pressure and continuous supply, defendant promises and it is directed to take immediate steps to remedy these complaints: Meter charges, that though the Commission has always held that the water company is obliged to install meters at its own expense, in this particular instance, owing to the present financial condition of this company and its inability to secure funds for necessary additions, an exception must be made, defendant accordingly directed to install meters upon demand, collecting a charge of $10.00 per meter for ¾-inch meters, crediting such charge to consumer's water bill at the rate of $1.00 per month until the entire sum is returned. Defendant directed to collect a minimum charge of $1.00 per month and not to install more than one meter for any one house on any one lot.

Held, As regards the rates of this utility: In connection with cases before the Commission it appears that the rates of one water company in this territory should be decreased and the rates of three others should be increased, which action if taken would create a very unsatisfactory condition. Considering that the city of Santa Monica has taken steps to acquire these water systems, question of rates deferred until the city shall have had a reasonable time in which to purchase and operate these systems, if it so desires.

James W. Freeman, in propria persona.

J. C. Steele, for Complainants.

Dennison and Towner, by *C. C. Towner*, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is a complaint by residents of Santa Monica against the rates and certain rules and regulations and practices of Irwin Heights Water Company. For a description of this company's property and operations reference is hereby made to the decision this day being rendered in Application No. 1562, being an application of the city of Santa Monica for an order fixing and determining the just compensation to be paid by the city for the lands, property and rights of Irwin Heights Water Company.

In the amended answer herein the Irwin Heights Water Company, hereinafter referred to as the water company, asks the Railroad Commission to authorize the company to charge increased rates.

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The principal sources of complaint, as shown by the evidence in this proceeding, are as follows:

1. Inadequacy of pressure and supply.
2. Charge for meters.
3. Minimum meter charge.
4. Rates.

I.

Inadequacy of Pressure and Supply.

One of the principal causes of complaint against the water company is that the pressure and supply are inadequate. Quite a number of the water company's customers testified that they did not have sufficient water for domestic purposes during the summer season. Certain of the complainants testified that they did not have water, at times, for flushing their toilets and that serious inconvenience had been caused thereby. These complainants all live at the higher elevations under the water company's system. Their difficulties are due partly to this fact, and partly to the inadequate size of distribution pipes. The water company has erected a tank at an elevation above its reservoir for the purpose of serving its consumers on the higher levels, but a number of consumers who are having difficulty in securing the necessary supply of water have not been connected up with the tank. Attention is drawn particularly to the testimony of H. M. Bolton, Mrs. Georgia Volkmer, Mrs. Emma Monroe and Cora B. Smelser. Steps should be taken immediately to improve the service to these people.

The water company has been remedying, from time to time, certain of the more serious complaints against inadequacy of pressure and supply. Referring to the complaint of E. H. Gamble that he had not had enough water to flush sewers, Mr. C. C. Towner, the water company's manager, stated that within the next thirty days he would lay a main which would connect Mr. Gamble with the tank, so that he would thereafter have an adequate supply of water.

II.

Charge for Meters.

Considerable complaint was made because of the practice of the water company in compelling such consumers as desire a meter to pay for the meter and the cost of installation. The amounts so charged have generally been in the neighborhood of $10.00 to $12.00. Many consumers who complain of the flat rates would like to come under meters, but they object to paying for the meter. Only about one-third of this system has been metered.

In a number of cases the Railroad Commission has had under consideration the matter of charges for meters. The Commission has consistently held that it is as much the duty of a water company to pay

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for meters as to install at its expense the reservoirs, pumps, tanks and distributing system necessary to enable the company to perform its duties to the public. Reference is hereby made to the Commission's opinion and order in *City of Glendale* vs. *Title Guarantee and Trust Company* (Volume 2, Opinions and Orders of the Railroad Commission of the State of California, page 989), decided on June 11, 1913, in which case the question is fully considered on reason and authority. Subsequent to this decision the Commission has uniformly held that it is the duty of a water company to install meters at its own expense.

There is no general rule, however, which does not at times require qualification by reason of the facts of some particular case. In the present proceeding, it appears that the water company is having great difficulty in securing the necessary funds for improvements and extensions. The company claims to be operating at a considerable loss and has asked for an increase in rates. Mr. C. C. Towner, the water company's general manager, testified that in an attempt to secure $10,000.00 for improvements and extensions he had offered to pay as high as 9 per cent interest and 3 per cent commission for a loan of this amount to be secured by the entire property, but that he had been unable to secure the money. In view of this situation, the complainants in their brief agree that a temporary order be made that consumers be supplied with meters on their request to the water company, at a maximum cost to the consumers of $10.00, this sum to be repaid to the consumers by the water company in credits monthly of 50 per cent of their bill.

Mr. C. C. Towner, in letter of May 20, 1915, referred to this suggestion and stated that at present a deposit of not less than $11.00 per meter should be required and that the monthly credit should not exceed 25 per cent of the consumer's bill.

If it were not for the present financial situation in which the water company finds itself, the Commission would apply the usual rule and would direct that the meters be installed at the water company's own expense. Under all the conditions surrounding the facts of this particular case, I am of the opinion that it would be just and equitable to provide that whenever a consumer desires a meter of a size not in excess of a $\frac{5}{8}$-inch meter on a $\frac{3}{4}$-inch connection he shall be entitled to have the same installed on advancing to the water company the sum of $10.00, the water company thereafter to give credit on the consumer's bill at the rate of $1.00 per month until the amount advanced has been returned. If meters of a larger size are required the consumer shall advance the entire cost thereof, whereupon in addition to receiving back $10.00, in the manner hereinbefore specified, the consumer shall be entitled to the return of the excess over $10.00 by means of a credit of one-twelfth of the excess charge on his water bill in each of the twelve next ensuing months.

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III.

Minimum Meter Charge.

The evidence shows that the water company, in cases in which meters have been installed, collects a minimum charge of $1.00 for each house, or family, served from the meter. The maximum extent to which such charge could be collected under the ordinance establishing water rates for the city of Santa Monica for the fiscal year 1908-1909 would have been $1.50. Mr. C. C. Towner testified that the excess over the rate thus allowed was collected on general principles of equity. As the Railroad Commission is today holding in Case No. 700, *Strickler et al.* vs. *City Water Company of Ocean Park*, a rule requiring the collection of more than one minimum charge for a single meter leads to difficulty and uncertainty in its application in addition to being an unreasonable and unjust rule. The minimum charge collected by the water company on its metered services shall henceforth be $1.00 and no more for each meter. In order to protect consumers against the possibility of the installation by the water company of more than one meter for any house or any lot, it should be understood that the water company is to have no right to install more than one meter for any one house or any one lot.

IV.

Rates.

The complainants in this proceeding claim that the rates of Irwin Heights Water Company are too high and the water company claims that they are too low. The water company has requested herein that the Railroad Commission increase its rates to such sum as may appear to be just and reasonable.

In four proceedings now pending before this Commission, namely, the present proceeding, Case No. 700, *A. D. Strickler et al.* vs. *City Water Company of Ocean Park*, Case No. 701, *John G. McCarthy et al.* vs. *Santa Monica Water Company*, and Case No. 703, *L. Shelley et al.* vs. *Ocean Park Water Company*, the complainants have complained that the entire rates, or at least the minimum, are too high and in each case the water company has complained that the rates are too low and has made request for an increase. If the rates in these cases are adjusted on the principles usually applied in the establishment of public utility rates, while these four companies remain in separate ownerships, a heterogeneous and most unsatisfactory condition will result. While no definite conclusions have as yet been reached with reference to rates proper to be charged by each of these four companies, the investigations thus far conducted by this Commission tend to show that certain of these companies are not receiving the return to which they are entitled, while at least one of them is receiving a larger amount than that to which it is justly entitled, and must expect a reduction in case these proceedings are brought to a final termination. The result of such orders would

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be that some of these four companies serving in certain cases territory immediately contiguous to territory served by one or more of the other companies, would be charging rates either higher or lower than the rates charged by their neighbors. Prompted by a natural desire to receive water at the lowest rate, the customers of the company authorized to charge a higher rate would seek to secure water from the company directed to charge a lower rate, thereby still further weakening the business of the company or companies which are doing poor business and still further strengthening the business of the company or companies which are doing the best business. It is unnecessary for me to pursue this subject further. It must be perfectly obvious to any person who gives thought to this question that the only way properly to handle the water situation in Santa Monica is to regard the entire city as a whole and to have water supplied either by a single private corporation serving the entire city or by the city itself under a municipally owned and operated system.

The city of Santa Monica has instituted proceedings to have the Railroad Commission fix and determine the just compensation to be paid to each of these four companies and decisions on these applications are this day being rendered by the Railroad Commission. In view of this fact, and of the great difficulties surrounding the establishment of rates under existing conditions, which difficulties will all be obviated in case the city should acquire these properties and thereafter operate them as a unit, I consider that it would be inadvisable and inexpedient to reach a determination on the question of rates in these cases before the people of Santa Monica have had an opportunity to determine whether or not the city will acquire these properties.

Accordingly, these cases will be held open, in so far as concerns the establishment of general rates, until the people of Santa Monica have had a reasonable opportunity to determine whether or not the city will acquire the water properties of these companies.

I believe that I have now considered each of the issues in this case properly capable of determination at the present time. In case it should hereafter become necessary to resume consideration of the question of general rates, it may be necessary also to give further consideration to certain of the water company's rules and regulations not specifically referred to herein.

I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision,

It is hereby ordered as follows:

1. Irwin Heights Water Company shall forthwith take such steps as may be necessary to secure adequacy of pressure and supply to its con-

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sumers on the higher elevations, and particular attention is hereby directed in this connection to the complaints of H. M. Bolton, Mrs. Georgia Volkmer, Mrs. Emma Monroe and Cora B. Smelser.

2. Upon demand of any consumer, and the deposit by said consumer of the sum of $10.00, Irwin Heights Water Company shall install a meter to serve said consumer, and said sum of $10.00 shall be returned to the consumer by a credit on his water bill of $1.00 per month until the entire amount is repaid. If the consumer requires the installation of a meter of a size in excess of a $\frac{5}{8}$-inch meter on a $\frac{3}{4}$-inch connection, the consumer shall deposit the entire cost of the meter and the installation thereof, whereupon the excess cost over $10.00 shall be returned to him by the water company by a credit on his water bill each month of one-twelfth of such excess charge, the $10.00 to be returned as hereinbefore provided.

3. Irwin Heights Water Company shall make a minimum meter charge of $1.00 and no more and shall not have the right to install, on its initiative, more than one meter for any one house, or for any one lot.

4. In all other respects further consideration of the above entitled proceeding shall be deferred until it is definitely ascertained whether or not the city of Santa Monica will elect to acquire the lands, property and rights of the Irwin Heights Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

DECISION NO. 2543.

A. D. STRICKLER ET AL.

vs.

CITY WATER COMPANY OF OCEAN PARK.

Case No. 700.

Decided June 30, 1915.

Complainants attack the rates and service of respondent, particularly the charges for meters, service connections and the monthly minimum:

Held. Meters: Defendant directed to install all meters at its own expense, excepting those in excess of $\frac{3}{4}$ inch, the cost of which they may collect from the consumer and credit his bill at the rate of one-twelfth of such excess cost per month. Minimum charges: Defendant at present charges a monthly minimum of $1.00 per meter, or $1.50 if two or more houses or families are receiving service through the one meter. Monthly minimum charge of $1.00 and no more established and defendant directed not to install more than one meter for any one house or on

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any one lot. Service connections: Defendant directed to lay all connections at its own expense, and when necessary to give adequate service to install ¾-inch connections in place of the ½-inch connection at present in use. Matter of rates deferred pending the action of the city of Santa Monica in its endeavor to acquire by purchase the various water companies operating within such city, which includes the water system of defendant.

J. C. Steele and *J. W. Freeman*, for Complainants.

Anderson & Anderson, by *W. H. Anderson*, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Complainants in this case complain of the rates and of certain rules, regulations and practices of City Water Company of Ocean Park, hereinafter referred to as City Water company, in that portion of the city of Santa Monica which is served with water by this company. The answer denies the material allegations of the complaint and asks that the Railroad Commission establish such rates as will return 8 per cent upon the company's investment, together with operating expenses and depreciation.

The chief complaints in this case are as follows:

1. Charge for meters.
2. Minimum meter charge.
3. Service connection charge.
4. Inadequacy of pressure.
5. Rates.

I. Charge for Meters.

The evidence in this case shows that whenever a consumer desires to have a meter installed the City water company has compelled him to pay for the meter. The amounts usually paid having been $10.00 to $12.00 per meter, for the usual sizes.

The Railroad Commission has frequently had occasion to comment on such charges for meters. This matter was fully considered by the Commission in *City of Glendale* vs. *Title Guarantee and Trust Company* (Volume 2, Opinions and Orders of the Railroad Commission of California, page 989), decided on June 11, 1913, in which case the Commission on reason and authority held that it is as much the duty of a water company to install at its own expense the service pipe to the property line and the meter as it is to provide any other portion of its system necessary to perform its obligations to the public. The facts of this case present no reason to justify a deviation from this general rule.

City water company will be expected henceforth to install at its own expense meters when requested by its consumers, with the understanding that if a meter of a size in excess of a ⅝-inch meter is requested

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the excess cost shall be advanced by the consumer, to be repaid in the form of reductions from water bills at the rate of one-twelfth of the excess cost each month.

II. Minimum Meter Charge.

Considerable complaint was made by reason of the fact that in certain cases City water company, where there is only a single meter installed, charges a minimum in excess of the usual charge of $1.00. City water company replied that these charges are made in accordance with the provisions of General Ordinance No. 48, approved on March 6, 1908, establishing rates to be charged for water for the fiscal year 1908–1909. While the force of this ordinance was spent on the expiration of a year from its adoption, as specified in section 1 of article 14 of the Constitution of this State, the water companies nevertheless have continued to charge the rates specified therein. The particular provisions of this ordinance on which City water company relies reads as follows:

> "But in no case where a meter is used shall the rate be less than, per month, $1.00, except in cases where more than one family in a house or more than one house is located on the same lot and attached to the same meter; then the minimum rate shall be $1.50."

Complaint was made that where there is but one meter there should be but one minimum charge. One complainant owned a double house with one meter but was compelled to pay the minimum of $1.50 for the reason that more than one family either was living or might live in the house. This rule makes it necessary for the Water company to keep itself advised constantly as to whether there is only one family or more than one family living in the house. Such a rule is uncertain in its application and leads to much trouble. Other complainants testified that they had two or three houses on the same lot and that they were compelled to pay a minimum of $1.50 even in cases in which only one of such houses might be occupied. This situation further shows the difficulties and inequities resulting from such a rule.

I am of the opinion that where there is but one meter there should be but one minimum charge. In order to protect the consumers from any attempt on the part of the Water company to install a separate meter for each family in a double house or for each house on a lot, the rule should be established that the Water company shall not have the right to insist on more than one meter for any one house or for any one lot.

III. Service Connection Charges.

General Ordinance No. 204 adopted by the council of the city of Santa Monica on November 25, 1913, and effective on February 1, 1914, provides in part that it shall be unlawful for any water company, or

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employee, to make any charge for the installation of any service pipe within 100 feet of the property to be supplied.

The evidence in this case shows that in certain cases City water company did make such charges in Santa Monica subsequent to February 1, 1914. The Water company's president testified that such charges had been made unintentionally and agreed to make reparation in those cases in which the testimony developed such charges subsequent to February 1, 1914.

The Water company, however, claimed the right to charge for new service connections in case an existing connection was taken out at the request of the consumers and a new connection substituted. The testimony shows that there were several cases in which a ½-inch connection was replaced by a ¾-inch connection, in which case the company claimed the right to demand payment for the new connection. Such charges should not be imposed unless it clearly appears that the existing connection is sufficient and that a consumer unreasonably asks for the installation of a larger connection. The testimony shows that a large number of City water company's connections are ½-inch connections and that trouble has resulted in a number of cases by reason of the fact that this connection is too small. Where a larger connection is demanded by reason of the fact that a ½-inch connection is insufficient, the Water company should not charge the consumer for the installation of the new connection.

IV. Inadequacy of Pressure.

In several cases complaint was made that the Water company's pressure is inadequate for domestic purposes. While the evidence is not entirely clear, I am inclined to the opinion that in such cases the inadequacy was generally due to pipes and plumbing on the consumers' premises, except in those cases in which it was shown that the Water company's ½-inch connection is too small.

V. Rates.

The installation of meters at the expense of City water company, herein provided for, will largely relieve the complaints against the rates of this company resulting from the flat rates now in effect.

With reference to the request of the Water company herein that the Railroad Commission revise its entire rate schedule so as to increase the rates now charged by this company, it will be sufficient to refer to the discussion of this matter contained in the decision this day rendered in Case No. 698, *Freeman et al.* vs. *Irwin Heights Water Company,* in which case the reasons why such action on the part of this Commission should not be taken at the present time, particularly in view of the proceedings now pending by the city of Santa Monica to acquire the

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property of all the water companies in Santa Monica, are fully set forth.

This branch of the case will be left open awaiting such action as the city of Santa Monica may take in the matter of acquiring the properties of the four water companies now doing business in the city.

If it becomes necessary hereafter to give further consideration to the Water company's rates it may also be necessary at that time to inquire further into certain of the company's rules, regulations and practices. I believe that I have now given consideration to all the issues herein demanding attention at the present time.

I submit herewith the following form of order:

ORDER.

Public hearings having been held in the above entitled complaint and same being now ready for submission and the Railroad Commission being fully advised in the premises,

It is hereby ordered as follows:

1. City Water Company of Ocean Park is hereby ordered to install at its own expense, either at its own option or at the option of its consumers, meters of a size up to and including a ⅝-inch meter on a ¾-inch connection. If any consumer desires the installation of a larger meter he must advance the excess cost thereof, the amount thus advanced to be returned to him in the amount of one-twelfth of such excess cost monthly. The company's attention is hereby directed to the advisability of installing service connections sufficient for the adequate service of its customers.

2. The minimum charge for any one meter, to be collected by City Water Company of Ocean Park, shall be $1.00 and no more; provided that the Water company shall not have the right, on its initiative, to install more than one meter for any one building or more than one meter for any one lot.

3. City Water Company of Ocean Park shall, at its own expense, install service connections from its mains to the property line and whenever it becomes necessary, to give good service, to replace an existing ½-inch connection by means of a ¾-inch connection, such replacement expense shall be borne entirely by the Water company.

4. In all other respects further consideration of the above entitled proceeding shall be deferred until it is definitely ascertained whether or not the city of Santa Monica will elect to acquire the lands, property and rights of City Water Company of Ocean Park in Santa Monica.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

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DECISION NO. 2544.

JOHN G. McCARTHY ET AL.

vs.

SANTA MONICA WATER COMPANY.

Case No. 701.

Decided June 30, 1915.

Complainants attack the rates, rules and service of defendant water company, which complaint it later amended to petition the Commission to compel certain extensions only; the water company in its answer claims that such extensions would entail a considerable expenditure upon which they could not expect to receive a return, and further petition the Commission to establish a fair and reasonable schedule of rates for their system.

Held, As heretofore held by the Commission in a number of complaints of this nature, a utility must not merely look to the return it will receive from each individual connection, but to the return from the system as a whole; that the connections herein desired are all within the territory which defendant holds itself out as serving and the connections should be made at its own expense. Matter of rates deferred pending the outcome of the city of Santa Monica's endeavors to acquire by purchase the system of defendant herein.

J. C. Steele and *J. W. Freeman*, for Complainants.

Goudge, Williams, Chandler & Hughes, by *H. J. Goudge*, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Complaint was made in this proceeding against the rates and certain alleged rules, regulations and practices of Santa Monica Water Company.

At the hearing, it appeared that for some time past the Water company has made no charge for the installation of meters and also no charge for connection and disconnection except in cases of disconnection for failure to pay back bills. At the hearing, all charges against the company were withdrawn except the charge that the minimum rate is too high and that the company has failed to make extensions at its own expense in cases in which complainants allege such extensions should be made.

The defendant in its amended answer asks that the Railroad Commission make an order authorizing an increase of its rates.

For the reasons stated in the decision this day being rendered in Case No. 698, *Freeman et al.* vs. *Irwin Heights Water Company*, it will be unnecessary, at the present time, to give consideration to the issues as to rates herein presented.

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This leaves for consideration only the question of extensions. Complaint with reference to failure to make extensions was made herein, as follows:

1. Mrs. Frank Farris.

Mrs. Farris lives at No. 1434 Fourteenth street in Santa Monica, and is served by a 2-inch pipe which is laid in the alley through blocks 111, 136 and 161. Between thirty-five and forty consumers are served from this line. The evidence shows that the pressure is inadequate and that the line should be replaced by a 4-inch line. I shall recommend an order that this be done.

2. Mr. C. G. Walker.

Mr. Walker desires to build a house on lot J, block 18, on Ninth street between Idaho and Montana. His property is located 475 feet distant from an 8-inch main on Montana avenue. He offers to put in a ¾-inch pipe to this main at his own expense but the company refuses to connect him.

3. Mr. C. A. Tegner.

By letter dated May 6, 1915, the defendant asked the Commission for a ruling with reference to this case. Mr. Tegner desires to build a house on lot M, block 43, between Idaho and Montana and Eighth and Ninth streets. The company at the present time has 250 feet of 1-inch pipe serving three consumers in this vicinity and in order to serve Mr. Tegner the company claims that it will be necessary to replace this 250 feet of 1-inch pipe with 4-inch standard pipe and to extend it a further distance of 230 feet. It would be necessary to cross one 80-foot macadamized street. The company claims that it would cost $283.13 to replace its 1-inch main and to make the extension desired by Mr. Tegner. The company has refused to make this expenditure on the ground that the revenue to be derived from this extension would not be compensatory. Mr. Tegner later appeared before the Commission at one of the public hearings herein and testified to his need for the water. He testified that he was being served by hose from a temporary tap at the end of the company's present line in the rear of lot C, block 68, and that there are eight houses already constructed in block 68, of which four were built during the last fourteen months.

The property, both of Mr. Walker and of Mr. Tegner, is located in an area which is entirely surrounded by the mains of Santa Monica Water Company. No other company serves water in this portion of Santa Monica. This Commission has frequently laid down the rule that where a water company is doing business within a city under a franchise under the Constitution of 1879 it is in general the duty of the water company to serve at least the general territory occupied by its system.

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It is not necessary in this proceeding to consider the question of the extent to which it will be necessary for the water company to go beyond the general territory which is being served.

A water company can not reasonably expect that each extension will pay for itself. The situation must be viewed as a whole. There may well be cases in which it would be unfair to the other consumers of a utility and to the utility itself to compel the utility to make a certain extension at its own expense. I am satisfied, however, that the cases presented by Mr. Walker and Mr. Tegner are not of this character, and that the Water company should make the necessary extensions, at its own expense, to serve the property of these two men. The character of the extension I am willing to leave to the good judgment of the Water company.

4. Lottie McDevitt and Elizabeth Trimlett.

These people own lots 17 and 18, in block 7 in the Chelsea Green tract at the northwest corner of Twenty-sixth street and Arizona avenue, upon which two houses are now being constructed. Mrs. Trimlett testified concerning the need for water on these premises. Mr. James Armstrong, one of the Railroad Commission's hydraulic engineers, testified concerning the means necessary to be taken to convey water to these premises and that in his judgment the only question at issue, from an engineering standpoint, was whether the company should install a 4-inch pipe or a temporary 1-inch pipe. An extension of 432 feet would be necessary.

The property of these people is located in an area which is surrounded by mains of Santa Monica Water Company in each direction, and in no case distant more than one block.

For the reasons hereinbefore given with reference to the extensions desired by Mr. Walker and Mr. Tegner I find that Santa Monica Water Company should also make an extension at the company's expense to serve the McDevitt and Trimlett properties, the character of the extension to be determined by the Water company.

Complaints with reference to extensions are the only complaints of any substantial character which have been made to this Commission with reference to this company. The company has itself asked the Commission for advice with reference to certain of the extensions hereinbefore discussed, in an apparent desire to proceed in harmony with the Commission's views in cases of this character.

I believe that I have now disposed of all the issues in this proceeding requiring consideration at the present time.

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I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision,

It is hereby ordered, as follows:

1. Santa Monica Water Company is hereby directed to replace by means of a 4-inch main the 2-inch main located in the alley between blocks 111, 136, 161 and beyond to its end, now serving Mrs. Farris and some thirty-five to forty other consumers.

2. Santa Monica Water Company is hereby directed to install at its own expense the extensions necessary to serve the properties of C. G. Walker, C. A. Tegner, Mrs. Lottie McDevitt and Mrs. Elizabeth Trimlett, as described in the opinion which precedes this order, and thereafter to serve said premises with water at the company's usual rates.

3. In all other respects further consideration of the above entitled proceeding shall be deferred until it is definitely ascertained whether or not the city of Santa Monica will elect to acquire the lands, property and rights of Santa Monica Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

DECISION No. 2545.

L. SHELLEY ET AL.

vs.

OCEAN PARK WATER COMPANY.

Case No. 703.

HARVEY M. CARLTON

vs.

OCEAN PARK WATER COMPANY.

Case No. 756.

Decided June 30, 1915.

Complainants attack the rates, rules and services of defendant water company and after an investigation defendant is directed to install necessary improvements to provide adequate pressure to its consumers residing on the higher levels, also to discontinue the collection of a charge for meters and hereafter to install all

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meters up to ⅝ inch at its own expense. Such portions of the complaints relative to the quality of water and petition for a refund of the amount paid for a meter, dismissed, the Commission having no jurisdiction therein. The subject of rates deferred pending the action of the city of Santa Monica in its endeavor to purchase the system of defendant.

J. C. Steele and *J. W. Freeman,* for Complainants in Case No. 703.

Harvey M. Carlton, in propria persona.

Tanner, Odell & Taft, by *S. W. Odell,* for Ocean Park Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

These are complaints brought against Ocean Park Water Company by certain of the company's consumers in the city of Santa Monica. For a description of the property and operations of the Ocean Park Water Company reference is hereby made to the decision this day being rendered in Application No. 1561, being application of the city of Santa Monica for an order fixing and determining the just compensation to be paid by city of Santa Monica for the lands, property and rights of Ocean Park Water Company.

The complaints presented by complainants in the above entitled proceedings may be classified as follows:

1. Inadequacy of pressure and supply.
2. Meter charge.
3. Quality of water.
4. Rates.

I.

Inadequacy of Pressure and Supply.

The testimony shows that during certain seasons of the year, particularly in the summer time, quite a number of the customers of the Ocean Park Water Company, hereinafter referred to as the Water company, do not receive water in amounts and under pressure to which they are entitled. Quite a number of these people, particularly those living on what are referred to as the Fourth and Sixth street hills, do not have water pressure sufficient to raise the water to the second stories of their homes and they also have difficulty in securing enough water for irrigation. This condition seems to be due in part to inadequate size of certain of the distributing mains and in part to the fact that the Water company's reservoir is located at an elevation only slightly in excess of that of these consumers and that no provision has been made for a tank erected at a higher elevation for the purpose of supplying the company's customers on the higher levels.

The Water company's attention is hereby directed to these complaints and the company will be expected to take the necessary steps to remedy them.

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II.

Meter Charge.

The evidence shows that while all the water companies in Santa Monica were recently prohibited by city ordinance from making any charge for service pipe, Ocean Park Water Company has continued to make a charge for meters, if installed by the company, amounting to at least $10.00 for the usual sizes.

The Railroad Commission has frequently had occasion to comment on such charges for meters. This matter was fully considered by the Commission in *City of Glendale* vs. *Title Guarantee and Trust Company* (Volume 2, Opinions and Orders of the Railroad Commission of California, page 989), decided on June 11, 1913, in which case the Commission on reason and authority held that it is as much the duty of a water company to install at its own expense the service pipe to the property line and the meter as it is to provide any other portion of its system necessary to perform its obligations to the public. The facts of this case present no reason to justify a deviation from this general rule.

Ocean Park Water Company will be expected henceforth to install at its own expense meters when requested by its consumers, with the understanding that if a meter of a size in excess of a ⅝-inch meter on a ¾-inch connection is requested the excess cost shall be advanced by the consumer, to be repaid in the form of reductions from water bills at the rate of one-twelfth of the excess cost each month.

In Case No. 756, the complainant asks for an order directing Ocean Park Water Company to refund to him the sum of $10.00 which he heretofore paid for a meter. I do not understand that this Commission has power to compel a refund for property heretofore purchased by a consumer and donated to the Water company. Consumers in this situation are unfortunate in that adequate regulation of Public Utilities was not heretofore provided in this State.

III.

Quality of Water.

Many complaints against the quality of the water supplied by Ocean Park Water Company were presented to the Commission at the hearings herein. These complainants testified that the water is unfit for drinking and that they buy other water for drinking in addition to paying the Water company's regular rates. This is a matter as to which this Commission has no authority to give relief for the reason that the legislature in chapter 373 of the laws of 1913, approved on June 13, 1913, transferred from this Commission to the State Board of Health jurisdiction over the quality of water supplied for domestic use. Relief in the premises must be sought from the State Board of Health.

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IV.

Rates.

The installation of meters at the expense of Ocean Park Water Company, herein provided for, will largely relieve the complaints against the rates of this company resulting from the flat rates now in effect.

With reference to the request of the Water Company herein that the Railroad Commission revise its entire rate schedule so as to increase the rates now charged by this company, it will be sufficient to refer to the discussion of this matter contained in the decision this day rendered in Case No. 698, *Freeman et al.* vs. *Irwin Heights Water Company,* in which case the reasons why such action on the part of this Commission should not be taken at the present time, particularly in view of the proceedings now pending by the city of Santa Monica to acquire the property of all the water companies in Santa Monica, are fully set forth.

This branch of the case will be left open awaiting such action as the city of Santa Monica may take in the matter of acquiring the properties of the four water companies now doing business in the city.

If it becomes necessary hereafter to give further consideration to the Water company's rates it may also be necessary at that time to inquire further into certain of the Company's rules, regulations and practices. I believe that I have now given consideration to all the issues herein demanding attention at the present time.

I submit herewith the following form of order:

ORDER.

Public hearings having been held in the above entitled proceedings and the same having been submitted, and the Commission being fully advised in the premises,

It is hereby ordered as follows:

1. Ocean Park Water Company is hereby ordered to take such steps as may be necessary to provide adequacy of pressure and supply for its consumers, as indicated in the opinion preceding this order.

2. Ocean Park Water Company is hereby ordered to install at its own expense, either at its own option or at the option of its consumers, meters of a size up to and including a $\frac{5}{8}$-inch meter on a $\frac{3}{4}$-inch connection. If any consumer desires the installation of a larger meter he must advance the excess cost thereof, the amount thus advanced to be returned to him in the amount of one-twelfth of such excess cost monthly. The Company's attention is hereby directed to the advisability of installing service connections sufficient for the adequate service of its customers.

3. In all other respects further consideration of the above entitled proceedings shall be deferred until it is definitely ascertained whether

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or not the city of Santa Monica will elect to acquire the lands, property and rights of Ocean Park Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

DECISION No. 2546.

IN THE MATTER OF THE RATES, RULES AND REGULATIONS OF CONSUMERS WATER COMPANY.

Case No. 776.

IN THE MATTER OF THE RATES, RULES AND REGULATIONS OF DOMESTIC WATER COMPANY.

Case No. 777.

IN THE MATTER OF THE RATES, RULES AND REGULATIONS OF WESTERN WATER COMPANY.

Case No. 778.

IN THE MATTER OF THE APPLICATION OF CONSUMERS WATER COMPANY FOR PERMISSION TO SELL TO WESTERN WATER COMPANY ALL AND SINGULAR ITS PROPERTY, BUSINESS AND ASSETS AND OF WESTERN WATER COMPANY FOR PERMISSION TO PURCHASE THE SAME.

Application No. 1735.

IN THE MATTER OF THE APPLICATION OF W. A. FISCHER FOR PERMISSION TO SELL TO WESTERN WATER COMPANY ALL AND SINGULAR HIS PROPERTY, BUSINESS AND ASSETS OWNED AND OPERATED BY HIM UNDER THE FIRM NAME AND STYLE OF DOMESTIC WATER COMPANY, AND OF WESTERN WATER COMPANY FOR PERMISSION TO PURCHASE THE SAME.

Application No. 1736.

Decided June 30, 1915.

The Commission institutes upon its own initiative, an investigation into the rates, rules and regulations of the Consumers Water Company, Domestic Water Company and Western Water Company, such companies serving the cities of Taft and South Taft and the oil fields in the vicinity. Subsequent to the hearing in the above cases the officials of the three water companies agree to a consolidation and petition for authorization to transfer the Consumers and the Domestic to the Western Water Company.

Held, After an investigation into the operating conditions of the respondent companies and a valuation of their properties, that the present rates of the Western

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Water Company are just and should remain as at present, also the city of Taft should pay for water received for fire purposes and a rate of 3 cents per barrel with a monthly minimum of $30.00 established for this service. Rate of 90 cents per 100 cubic feet for first 500, 75 cents per 100 cubic feet for next 2,000 and 60 cents per 100 cubic feet for amounts in excess of 2,500, with a monthly minimum of $1.50 established for the systems of Consumers and Domestic Water companies.

Held. It appearing that the consolidation of the water companies as herein applied for will effect a considerable saving in operating expenses, Consumers Water Company and Domestic Water Company authorized to transfer their water systems to the Western Water Company for a consideration of $18,000.00 and $6,000.00 for the respective systems.

Joseph Haber, Jr., for Consumers Water Company, Domestic Water Company and Western Water Company.

Barclay McCowan, for consumers.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

Upon complaint from various consumers of water, the Railroad Commission, on February 11, 1915, instituted on its own motion an investigation into the rates, rules and regulations of Consumers Water Company, Domestic Water Company and Western Water Company. To these investigations Case Numbers 776, 777 and 778, respectively, were assigned.

Public hearings were held in Taft on May 27 and 28, 1915, and in San Francisco on June 26, 1915.

Western Water Company pumps water from two wells on land leased from Kern County Land Company, being all that portion of the northeast quarter of the southeast quarter of section 5, township 31 south, range 25 east, M. D. B. and M., lying 100 feet west of the "Outlet canal." This property is located some twelve and one-half miles northeast of Taft. Water is conveyed to Taft through a 12-inch lap-welded wrought iron pipe. At a point about nine miles from the pumps one principal branch line takes off toward the south and supplies the district in the vicinity of Maricopa. From Taft, main transmission lines extend into the Midway oil fields. Western Water Company supplies water to Consumers Water Company for distribution in Taft, to W. A. Fischer, doing business under the name of Domestic Water Company, for distribution in South Taft, and to Heck Brothers for distribution in Fellows. In addition to these three consumers, Western Water Company in 1914 supplied water to 94 consumers in the oil fields, nearly all of whom are oil companies. The principal use of water in the oil fields is for drilling oil wells and pumping oil.

Consumers Water Company buys its water from Western Water Company and retails it in Taft. W. A. Fischer does the same in South Taft.

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At the hearing in Taft, estimates of the reproduction cost of Western Water Company's physical property were presented on behalf of the water company by J. T. Ryan and on behalf of the Railroad Commission by R. W. Hawley. These estimates are as follows:

J. T. Ryan	$725,342 00
R. W. Hawley	685,698 00

Mr. Ryan's estimate includes $34,770.00 for working capital, which item was not included in Mr. Hawley's report.

Mr. Hawley also presented an estimate of $555,154.00 as representing the depreciated reproduction value of the physical property as of January 1, 1915, on the straight line basis.

Western Water Company has issued capital stock of the par value of $200,000.00, of which $149,000.00 par value was sold for cash at par and $51,000.00 was issued to C. B. Colby for promoting the company. The company has no bonded indebtedness. On April 30, 1915, the company had outstanding $34,471.19 in promissory notes and $16,000.00 to $17,000.00 in open accounts. All the remaining moneys which have been invested in the property have come, directly or indirectly, from earnings. The company paid $58,000.00 dividends in 1913, $28,000.00 in 1914 and $12,000.00 in 1915. All its earnings in excess of these amounts have been invested in the property.

Water company's Exhibit No. 11 shows revenues, expenses, dividends and surplus for the years 1912, 1913 and 1914 as follows:

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TABLE I.

Income Account.

	1912	1913	1914
Revenues:			
Water sales	$291,621 32	$316,919 15	$248,182 94
Less uncollectible accounts		338 17	380 97
Gross revenue	$291,621 32	$316,580 98	$247,801 97
Operating expenses:			
Royalties	$21,012 80	$20,947 11	$16,282 49
Pumping expenses	18,214 21	56,957 93	43,769 50
Distribution expenses	13,972 84	20,582 04	21,974 60
Commercial expenses	3,586 48	5,592 49	5,370 69
General expenses	18,722 11	16,869 43	25,431 32
Total operating expenses	$105,538 44	$120,949 00	$112,828 60
Taxes	2,408 87	3,353 47	4,236 06
Total operating expenses and taxes	$107,947 31	$124,302 47	$117,064 66
Net operating revenue	$183,671 01	$192,278 51	$130,737 31
Other income:			
Rentals	$360 00	$660 00	$965 70
Discount	263 19	981 06	809 49
Miscellaneous	1,111 44	213 60	925 70
Total other income	$1,734 93	$1,854 66	$2,700 89
Gross income	$185,408 94	$194,133 17	$133,438 20
Deductions:			
Interest	$607 13	$3,401 52	$6,770 65
Depreciation of plant and equipment	34,242 00	41,923 00	52,227 00
Total deductions	$34,849 13	$45,324 52	$58,997 65
Surplus	$150,559 81	$148,808 65	$74,440 55
Dividends		58,000 00	28,000 00
Surplus unappropriated	$150,559 81	$90,808 65	$46,440 55

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It thus appears that the company earned a surplus of $150,559.81 in 1912, $148,808.85 in 1913 and $74,440.55 in 1914. The company also invested in its plant the amounts shown in the foregoing table under the head of depreciation.

The evidence shows that the business of the water company has fallen off considerably recently, due to a diminution of activity in the oil fields. Whereas, the revenue for the first four months in 1914 was approximately $88,000.00 the revenue during the corresponding period in 1915 decreased to approximately $61,000.00. If the same proportion of reduction in revenue continues throughout the year 1915, the total gross revenue for the year would amount to approximately $173,000.00 as compared with $248,000.00 in 1914. Assuming annual operating expenses of $100,000.00 and an annual depreciation of $41,000.00, as estimated by the Railroad Commission's engineers, it is quite evident that the surplus earnings for 1915 available for the payment of a return on the investment would yield a return of somewhat less than 6 per cent on the depreciated reproduction value of the plant as estimated by Mr. Hawley.

The rates of Western Water Company are as follows:

TABLE II.

Western Water Company's Rates.

Rates per barrel on daily quantity (five-year contract).

	1 to 1,500 barrels. Per barrel	1,500 to 3,500 barrels. Per barrel	3,500 to 10,000 barrels. Per barrel
First year	$.03	$.03	$.02¾
Second year	.03	.02¾	.02½
Third year	.03	.02½	.02¼
Fourth year	.02½	.02¼	.02
Fifth year	.02¼	.02	.01¾

The company has a minimum charge of $2.50 per month.

It will be observed that these water rates provide for reductions, from time to time. A number of the company's consumers will soon be able to avail themselves of the reduced rates under this schedule.

In view of the decrease in Western Water Company's business, hereinbefore referred to, the problematic life of the oil fields, the uncertainty of the term of the company's profitable business and the automatic reductions in rates provided for in the company's schedule of rates, I can not at present recommend any decrease in Western Water Company's rates in the oil fields.

The property of Consumers Water Company, serving Taft, was bought by its present owners in 1912 for $7,600.00. In its annual report for the year ending December 31, 1914, the company reports a total investment as of December 31, 1914, of $19,777.00. Mr. Ryan estimates

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a reproduction cost new of $25,670.00 and Mr. C. I. Rhodes, one of the Railroad Commission's assistant hydraulic engineers, an estimated reproduction cost new of $19,776.23 and a depreciated reproduction cost of $13,869.00. Neither of these engineers made a thorough study and inspection of this system.

W. A. Fischer testified that he paid $3,500.00 in February, 1913, for the water system which serves South Taft, or Jamison. Of this amount $1,500.00 was paid in cash and indebtedness amounting to $2,000.00 was assumed. Mr. Fischer's annual report for the year ending December 31, 1914, claims an investment to date of $7,786.00. Mr. Ryan estimated a reproduction cost of $10,846.00 and Mr. Rhodes an estimated reproduction cost of $7,838.00 and a depreciated reproduction cost of $6,139.00.

Careful inquiry was made at the hearing into the operating expenses of these two companies. It appeared that certain of these expenses, particularly the salaries of general officers, have been unduly high and that the interest of the public would be best served by a consolidation of Western Water Company, Consumers Water Company and Domestic Water Company and by the consequent elimination of two out of the three existing groups of officers' salaries.

The rates at present charged by Consumers Water Company and Domestic Water Company are as follows:

TABLE III.

Rates—Consumers Water Company.

Minimum	$1 50
First 533 cubic feet at $1.30 per 100 cubic feet.	
Next 267 cubic feet at $1.17 per 100 cubic feet.	
All above 800 cubic feet $1.11 per 100 cubic feet.	

The rates at present charged by Domestic Water Company are as follows:

TABLE IV.

Rates—Domestic Water Company.

Minimum	$1 50
All water used $2.25 per 100 cubic feet.	

Consumers Water Company allows a discount of 10 per cent for water used between 4,000 and 5,000 cubic feet per month, and of 15 per cent for water used above 5,000 cubic feet, if payments are made before the tenth day of the month following use. Domestic Water Company allows a discount ranging from 28 per cent for use under 800 cubic feet per month to 50 per cent for amounts used above 5,333 cubic feet if bills are paid before the tenth day of the month following use.

The water rates charged in Taft and South Taft are the highest rates charged for domestic water in California, in so far as domestic water rates have come under the Railroad Commission's investigation. On

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the other hand, Western Water Company claims that still higher rates are charged in other portions of the oil fields.

After careful consideration, I find as a fact that the rates at present charged for domestic water by Consumers Water Company and Domestic Water Company are unjust and unreasonable in so far as they differ from the rates herein established, and I further find as a fact that the following rates are just and reasonable rates to be charged for water supplied for domestic use in Taft and South Taft:

TABLE V.

Domestic Rates to Be Charged in Taft and South Taft.

Minimum ..... $1 50 monthly
First 500 cubic feet 90 cents per 100 cubic feet.
Next 2,000 cubic feet 75 cents per 100 cubic feet.
All used over 2,500 cubic feet 60 cents per 100 cubic feet.

Under these rates, consumers in Taft will receive 52 cubic feet of water more than hitherto for the minimum payment of $1.50 and for amounts of water used in excess of the minimum the reductions in rates will be between 23 and 46 per cent. Consumers in South Taft will receive 100 cubic feet of water more than hitherto for the minimum payment of $1.50 and for amounts of water used in excess of the minimum the reductions in rates will be betwen 60 and 73 per cent. These percentages will be reduced in cases in which the discount is now received for prompt payment.

Domestic Water Company, in addition to operating a pipe distributing system, sells water from a tank wagon for 30 cents for the first barrel and 25 cents for each additional barrel. This rate may continue.

Western Water Company has been providing water for fire service in Taft through a master meter separate from that supplying Consumers Water Company and Domestic Water Company. The company has recently billed the city at the rate of 3 cents per barrel for the water so used, but has not received any payment. The city, of course, can not expect to continue to receive this service free. I shall recommend that Western Water Company be authorized to make a minimum charge of $30.00 per month for water supplied to the town of Taft for fire purposes, with payment for all water used at the rate of 3 cents per barrel, or 53.6 cents per 100 cubic feet.

Subsequent to the hearings at Taft, the water companies apparently became convinced that it would be better to consolidate the three systems in the ownership of Western Water Company, so as to save unnecessary operating expenses. The companies accordingly presented petitions in Applications Nos. 1735 and 1736, asking that such transfers of property be authorized.

In Application No. 1735 Consumers Water Company asks authority to sell its entire water system to Western Water Company and the

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latter company asks authority to purchase the same. The property is to be sold for $18,000.00 and is to be paid for by the issue by Western Water Company of twelve non-interest bearing promissory notes, each in the sum of $1,500.00, payable at intervals of one month, beginning one month after the date of the Railroad Commission's order.

In Application No. 1736, Domestic Water Company asks authority to sell its entire water system to Western Water Company and the latter company asks authority to purchase the same. The property is to be sold for $6,000.00 and is to be paid for by the issue by Western Water Company of twelve non-interest bearing promissory notes, each in the sum of $500.00, payable at intervals of one month, beginning one month after the date of the Railroad Commission's order.

These two applications, as well as additional evidence as to depreciation in pipe lines, in the cases brought on the Railroad Commission's own motion, were presented in San Francisco on June 26, 1915.

I find that public convenience and necessity will be served by the transfer of the properties of Consumers Water Company and Domestic Water Company to Western Water Company and recommend that these two applications be granted.

Certain questions concerning deposits required by these water companies will be disposed of when the Railroad Commission renders its decision in Case No. 683, being a general investigation on the Railroad Commission's own motion into deposits and all other charges as conditions precedent to service, required by water, gas, electric and telephone utilities.

I submit the following form of order:

ORDER.

The Railroad Commission, having instituted an investigation on its own motion into the rates, rules and regulations of Western Water Company, Consumers Water Company and Domestic Water Company, and Consumers Water Company having applied for an order authorizing it to sell its entire property to Western Water Company, and Domestic Water Company having applied for an order authorizing it to sell its entire property to Western Water Company, and Western Water Company having applied for an order authorizing it to purchase the properties of Consumers Water Company and Domestic Water Company, and public hearings having been held in said proceedings and the same being now ready for decision,

The Railroad Commission hereby finds as a fact:

(1) That the rates now charged for water by Consumers Water Company and Domestic Water Company are unjust and unreasonable in so far as they differ from the rates herein established;

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(2) That the rates herein established, to be charged for water by Consumers Water Company and Domestic Water Company, their successors and assigns, are just and reasonable;

(3) That the public convenience and necessity require the transfer of the properties of Consumers Water Company and Domestic Water Company to Western Water Company and the subsequent operation of the same by Western Water Company.

Basing its order upon the foregoing findings of fact and upon the additional findings which are contained in the opinion which precedes this order,

It is hereby ordered as follows:

(1) The rates to be charged by Consumers Water Company and by W. A. Fischer, doing business under the name of Domestic Water Company, their successors and assigns, for water delivered in Taft and South Taft through their pipe lines for domestic use are as follows:

Minimum	$1 50 monthly
First 500 cubic feet 90 cents per 100 cubic feet.	
Next 2,000 cubic feet 75 cents per 100 cubic feet.	
All used over 2,500 cubic feet 60 cents per 100 cubic feet.	

(2) The rate to be charged by Western Water Company for water supplied to the town of Taft for fire purposes shall be a minimum charge of $30.00 per month, with payment for all water used at the rate of 3 cents per barrel, or 53.6 cents per 100 cubic feet.

(3) Consumers Water Company and W. A. Fischer, doing business under the name of Domestic Water Company, are hereby authorized to sell and transfer their respective water properties to Western Water Company and Western Water Company is hereby authorized to purchase and operate said properties, at a price of $18,000.00 for the property of Consumers Water Company and $6,000.00 for the property of Domestic Water Company on the following conditions, and not otherwise:

(*a*) Said price shall not be taken before the Railroad Commission or other public authority as representing for rate-fixing or any other purpose the fair value of the property.

(*b*) Within ten days after the execution of the deeds of conveyance, the parties shall file certified copies thereof with the Railroad Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

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Decision No. 2547.

IN THE MATTER OF THE APPLICATION OF CITY OF SANTA MONICA FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO IRWIN HEIGHTS WATER COMPANY FOR ITS LANDS, PROPERTY AND RIGHTS.

Application No. 1562.

Decided June 30, 1915.

City of Santa Monica, acting with a view to purchasing the water companies serving consumers within its limits, applies to this Commission to fix the just compensation to be paid for the system of the Irwin Heights Water Company, in connection with which the Commission, in its investigation, considers this system under four heads, namely, lands, physical structures and improvements, water rights, and going value, and in conclusion fixes the sum of $75,000.00 as a fair and reasonable price for the properties in question.

In the review of physical structures the Commission again reiterates its former conclusions with reference to paving over mains, *i. e.*, that no additional allowance whatever will be permitted under this head when such paving was laid subsequent to the laying of mains; also, consideration must be given, in fixing a fair value, to facts surrounding the acquisition of the Marsh tract distributing system, which was donated to the water company and which at present is serving only one consumer, the revenue from which is far below the maintenance expenses thereof.

Water rights: The water company claims an allowance covering this item based on the cost of the next available source, which they contend is the Owens River water from Los Angeles, though the evidence clearly shows that wells sunk in the gravel strata from which the water company at present secures its water would produce a like supply, also that to pump such an amount of water from additional wells would not injuriously affect the supply of companies at present owning wells, nevertheless the fact that the water company already has a proven supply of water with the right to its continued use adds value to its property and justifies an allowance under this head.

Going value: That in considering an allowance under this head, a utility's power to earn a reasonable return on the value of its property with the prospects of future growth and increased earnings will carry considerable weight, while facts such as the Marsh tract distributing system, valued at approximately $10,000.00, while producing a revenue from only one consumer, detracts materially from such an allowance.

Victor R. McLucas, and *John Mellen,* for City of Santa Monica.

Dennison & Towner, by *C. C. Towner,* for Irwin Heights Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding to fix and determine the just compensation to be paid by city of Santa Monica, a municipal corporation, for the lands, property and rights of Irwin Heights Water Company, a public utility

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engaged in the business of selling water for domestic and municipal and, to some extent, for irrigation purposes in a portion of the city of Santa Monica. This proceeding is brought under the provisions of section 47 of the Public Utilities Act.

The petition filed by the city of Santa Monica alleges, in effect, that petitioner is a municipal corporation duly organized and existing under the laws of this State; that petitioner has a population of approximately 12,000 people and that its inhabitants derive water for domestic use from various wells and springs located in and around the city of Santa Monica, and owned and operated by certain water companies, including Irwin Heights Water Company; that by reason of Santa Monica's rapid growth it has been difficult for the owners of these water systems to secure funds for making the necessary extensions, additions and replacements to their respective systems; that the city council of Santa Monica finds that the public interest and convenience of the city require the acquisition and construction of a municipal water system and that the city of Santa Monica intends to acquire each of said water systems by eminent domain proceedings; and that the necessary ordinance preliminary to the bringing of this proceeding has been adopted by the city council. The city asks that the Railroad Commission fix and determine the just compensation to be paid for the lands, property and rights of Irwin Heights Water Company, in accordance with the provisions of section 47 of the Public Utilities Act.

At the hearing held in this proceeding it was stipulated that the evidence taken concurrently in Application No. 1561, being a similar application with reference to the property of Ocean Park Water Company, and Application No. 1564, being a similar application with reference to a portion of the property of City Water Company of Ocean Park, might be considered, in so far as material, as having been presented in this proceeding. Briefs have been filed and this proceeding is now ready for decision.

Irwin Heights Water Company secures its water by pumping from wells located on a parcel of land at the intersection of Marine street and Hatch street, on the southerly limits of the city of Santa Monica. These wells are between 60 and 75 feet deep. Three of the wells are connected up to a two-stage centrifugal pump. The water out of the fourth well flows into a reservoir which has been excavated a short distance from the other wells and is then pumped out of the reservoir. The water company's distributing reservoir is located at or near the intersection of Pearl street, if extended, with Logan avenue. The reservoir is 65½ feet wide by 225 feet long, and holds approximately 490,000 gallons. The company has also constructed near this reservoir a high tank for the purpose of supplying water to its customers on the higher elevations. The company owns a distributing system which in general covers that

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portion of the city of Santa Monica which is located between the right of way of Pacific Electric Railway Company on the north, the city limits on the south, Cambridge street on the east and the Pacific Ocean on the west, with the exception of the thickly settled territory in the southwestern portion of the general area thus described. The company serves water for domestic and municipal purposes and, to a slight extent, for irrigation. The company reported in its annual report for the year ending December 31, 1914, that it had 689 connections, of which 207 were metered. Mr. C. C. Towner testified that in 1914 the company had an average of about 650 consumers.

A description of the property to be acquired is attached to the petition herein and marked Exhibit "C." At the hearing the city filed an amended inventory which under stipulation was substituted for Exhibit "C." Several additional minor parcels of property were referred to at the hearing. At the close of the hearing it was stipulated that such additional property as was shown by the evidence might be added to the city's amended inventory, the desire of all parties being that the value herein determined should cover the water company's entire property. Exhibit No. 1, attached hereto, includes the entire property, in so far as I have been able to determine the same from the testimony and exhibits herein.

In its brief on file herein, the water company makes a final claim of between $118,201.00 and $128,735.00. The city in its brief makes a final claim of $57,769.20.

I shall discuss the value of the property under the following heads:

1. Lands.
2. Physical structures and improvements.
3. Water rights.
4. Going value.

1. Lands.

All parties have agreed to the value of the lands of Irwin Heights Water Company as follows:

Easterly portion of block 7, Session's subdivision	$6,000 00
Southwesterly portion of lot 8, block 45, East Santa Monica	2,440 00
Lot 16, block 46, East Santa Monica	2,000 00
Right of way for pump line	500 00
Right of way for pipe line across lot 1, block 41	100 00
Right of way for pipe line across lots 1 and 16, block 4	100 00
Right of way for pipe line across lots 14, 15 and 16, block "G," Ocean Spray tract	75 00
Right of way for pipe line across lots 1 and 2, block "G," Ocean Spray tract	50 00
Total	$11,265 00

These prices do not include any value for developed water.

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2. Physical Structures and Improvements.

Estimates of the reproduction value new and of the depreciated reproduction value of the physical structures and improvements of Irwin Heights Water Company were presented on behalf of the water company by C. S. Burns and on behalf of the Railroad Commission by Assistant Hydraulic Engineer James Armstrong.

As shown by water company's Exhibit No. 3, Mr. Burns estimated a reproduction value new of these properties amounting to $84,663.23 and a depreciated reproduction value of $70,988.09. He estimated an additional allowance for paving cost over mains and services of $11,997.13 under the head of reproduction cost, and $10,177.06 under the head of depreciated reproduction cost. In Decision No. 2279, rendered on April 9, 1915, in Application No. 1141, *In the matter of the application of the Marin Municipal Water District for an order of the Railroad Commission fixing and determining the just compensation to be paid to Marin Water and Power Company for its lands, property and rights,* this Commission held, both on reason and authority, that no allowance should be made, in valuing mains and services, for paving costs, unless the pavement was laid prior to the laying of the mains and services. As was there pointed out, such pavement does not in any way make the property more valuable. Subsequent to the testimony of Mr. Burns, the parties agreed upon a value of $631.00 under the head of "estimated reproduction cost" for paving allowance in those cases in which it was necessary for the water company to cut through pavement for the purpose of laying mains and services.

Mr. James Armstrong presented a report showing an estimate, together with additions later agreed upon between the water company and himself, of $74,429.00, under the head of "estimated reproduction cost," and $59,023.00 under the head of "estimated depreciated reproduction cost."

Mr. Armstrong and the Water company agreed on the items in their respective inventories and also on the ages of the respective items of the property. With slight minor exceptions, the Water company accepted Mr. Armstrong's unit prices, but not his overhead percentages. The chief differences between the Water company and Mr. Armstrong are as follows: $2,000.00 which the Water company claims for preliminary expenses, for which Mr. Armstrong testified that he had made an allowance in his overhead percentages; 5 per cent on the cost of pipes, for special fittings, which item was included by Mr. Armstrong in his unit prices for the pipe, which unit prices were accepted by the Water company; an allowance of 19 per cent for overhead percentages claimed by the Water company, as contrasted with allowances of between 8 and 16 per cent made by Mr. Armstrong. Mr. Armstrong's allowances being added in most cases to actual cost, which cost, as testified to by Mr. Armstrong, included a number of items usually covered by the

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addition of overhead percentages; and depreciation computed on the straight line theory, as estimated by Mr. Armstrong, as contrasted with depreciation computed on the sinking fund theory, as estimated by Mr. Burns.

The Water company in its brief also draws attention to an item of 4,551 feet of 8-inch riveted pipe, 11 years in use, total depreciated reproduction value of $1,734.00, which the company believes to have been omitted by Mr. Armstrong. An examination of Mr. Armstrong's appraisal shows that this item was omitted from the detail through an error in typing, but that it was included in the totals.

Before leaving this subject, I desire to draw attention to the fact that the estimates of Mr. Burns and Mr. Armstrong each includes an estimate for reproducing the distributing system in the Marsh tract, amounting to a sum in excess of $10,000.00. Although the pipe and a portion of the cost of laying the same, totalling $8,768.88, were donated to Irwin Heights Water Company by the owners of this tract, who desired to have water placed thereon so as to assist them in selling lots therein, the property now belongs to the Water company and the company is entitled to be paid its fair value. On the other hand, only one consumer has been taken on in this tract during the last two years and there does not seem to be prospect for further development of the tract in the near future. These matters must be considered in estimating the fair value of the property, as will hereinafter be pointed out.

After discussing the question of the value of the physical structures and improvements, and also a claim for going concern value, the Water company, in its brief, concludes that if a sum of $7,913.00 is added, as going concern value, to the depreciated reproduction value as testified to by Mr. Armstrong, particularly if Mr. Armstrong's estimate is amended by adding thereto the 8-inch riveted pipe hereinbefore referred to, "the difference between the two appraisals will be so slight that the company will be disposed to accept the same as to physical assets and going value." The question of going value will be hereinafter discussed.

3. Water Rights.

The testimony shows that all the water used in Santa Monica is derived from wells which are located in and about Santa Monica. Mr. H. T. Malloy, who dug most of the wells which have been sunk in this vicinity during the last 25 years, and who showed intimate knowledge, from practical experience, of water conditions in this vicinity, testified that the water percolates through gravel beds starting at or near the base of the Santa Monica mountains, a few miles west of Sherman, thence extending to a point north of Palms, thence dividing into two branches, referred to as the northerly and the southerly branch, thence reuniting at or near the Cody well, which is located about half a mile north of the Irwin Heights Water Company's wells,

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and thence passing on southeast and south of the Water company's wells in a general southwesterly direction to the ocean. It is his opinion, based on his experience, that these gravel strata have a width of from about 400 feet to three-quarters of a mile. While a few good wells have been bored off this strata, most of the producing wells in this vicinity are, according to Mr. Malloy, located on one of these two main gravel strata.

The wells of Irwin Heights Water Company have been continuously in operation for at least eight years. Several years ago these wells were tested and it was found that at the end of 72 hours the pump was delivering 65.65 miner's inches of water. Well No. 4 was not included in this test and had previously been tested and produced 11.65 miner's inches. Mr. C. C. Towner testified that an additional 2.7 miner's inches was secured by an enlargement of the reservoir which is located near the wells. While the Water company thus claims 80 miner's inches of water, it is fundamental that an appropriator of water is entitled only to the amount of water actually taken and used, and not to the amount which might possibly be diverted through his ditch or from his well.

Smith vs. *Hawkins*, 120 Cal. 86; *Senior* vs. *Anderson*, 115 Cal. 496; *Duckworth* vs. *Watsonville Water and Light Company*, 150 Cal. 521, 533.

Accordingly, it becomes necessary to consider the amount of water actually taken and used by Irwin Heights Water Company. The evidence on this point is conflicting. The city presented estimates, based upon the amount of power consumed and the consumption through meters, which would seem to indicate that the number of miner's inches actually used is not in excess of 27.4 miner's inches. The computation based on the meter use omits the water consumed for irrigation purposes, for street sprinkling and for settling of pipe, as well as losses in transmission, and is based on an estimate of 550 domestic consumers instead of 650. The estimate based on the amount of power consumed is based on a 24-hours continuous run of the pumps, while the evidence shows that the pumps are not operated at night and that the maximum run during the months of heaviest use is about 10 hours per day.

The water company claims a maximum consumption, including losses, during a few days of heaviest pumping in the summer months amounting to about 800,000 gallons per day, pumping 10 hours per day. This amounts to between 61 and 62 miner's inches. I am satisfied that the maximum use, not during any one minute or one hour, but during the few days of heaviest use in the summer time, has been between 60 and 62 miner's inches.

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That water rights acquired by appropriation may have value just as any other property is clear. *San Joaquin and Kings River Canal and Irrigation Company* vs. *County of Stanislaus*, 233 U. S. 454. The extent of the value is an entirely different question and presents the most difficult problem in this proceeding.

In *Water Company of Tonopah* vs. *Public Service Commission of Nevada*, decided on August 13, 1913, being a case of water right value claimed for percolating water, Judge Morrow refers to the Water company's claims as follows:

> "The water which it (the company) claims as a water right is percolating water running through its lands. I do not understand that percolating water passing under or through the soil is anywhere recognized as a water right, having a valuation separate and distinct from the land. It is not in any sense surface water. It is not water appropriated from running streams; nor is it water the right to which is the same as that of a riparian owner, Percolating water is part and parcel of the soil, and it is as much a constituent element of the land as the mineral therein contained. Its value, if it has any, is, therefore, in the land and can not be separated from the land. It follows that in this case the value which the water has must be in the land. It may be that the complainant's development of water upon this land has given it a largely increased value, but if that is so, it appears to me that that should be the valuation of the land with its water content as a whole and not as land with a water right attached. This may not make a great difference in the result; but it will enable the commission and the court to make a comparison with other land of like character and similarly situated."

In concluding, Judge Morrow further says:

> "It seems to me that it would be difficult to establish an absolutely independent water value aside from the value of the land; but the value of the water with the land may be ascertained in the view of its available uses."

In the present proceeding, the value of the land without reference to the water developed thereon has been agreed upon. If value is shown to the developed water such value must, under Judge Morrow's view, be considered in placing the final value upon the land. It makes but little difference, in the end, whether a separate allowance is made for such value as a separate water right value, or whether it be considered in determining the final value of the land with its water content and the rights growing out of the same, but it is conducive to clear thinking to analyze the situation as has been done by Judge Morrow.

In the present proceeding, F. E. Trask, a witness appearing in behalf of the Water company, testified that, in his opinion, the fair value of the water taken and used by Irwin Heights Water Company is $500.00 per miner's inch. He reached this conclusion by the applica-

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tion of the next available source theory. He considered that the next available source is Owens River water, owned by the city of Los Angeles, and reached his conclusion on a comparison between the assumed cost of delivering Owens River water to the city of Santa Monica as contrasted with the cost of pumping water from the wells of the Water company. There is nothing in the testimony to show that Owens River water is available for use in Santa Monica.

C. S. Burns, appearing for the Water company, testified to a value of $740.00 per miner's inch. This value is a composite value resulting from the application of the next available source theory and the next available use theory. Mr. Burns followed Mr. Trask in regarding the Owens River water as the next available source and he regarded irrigation use as the next available use.

Neither of these witnesses had made any personal measurements in and about Santa Monica and each of these witnesses based his acceptance of Owens River water as the next available source on the testimony of certain other witnesses with reference to local conditions, to which testimony reference will hereinafter be made. Each of these witnesses testified that if water can be developed without insurmountable legal obstacles by sinking additional wells in the water bearing strata in the vicinity of Santa Monica, his estimate of the value of the water of Irwin Heights Water Company must be *pro tanto* reduced. It seems impossible to escape from this conclusion. If it is proper to look to the next available source, it seems absolutely essential, in order to do justice in this proceeding between the city of Santa Monica and the Water company, to examine the possibility of securing water by sinking wells in the vicinity of Santa Monica and into the cost of such operations, if they are possible and feasible. If it appear that additional water can be derived in this manner, in necessary quantity, without material cost in addition to the amounts herein allowed to the Water company for its lands, wells, pump and transmission main, it must be evident that the Water company's right to pump water from its wells can not have a value anywhere nearly as great as that testified to by the company's witnesses.

It thus becomes necessary to consider the testimony with reference to the possibility of developing additional water in this immediate vicinity.

Mr. H. T. Malloy testified with reference to a large number of wells now in operation in and about Santa Monica. The following table contains, by reference to pages of the transcript, the names of these wells, the number of the wells where there are more than one, the depth of the wells, their capacity and the thickness of the water bearing gravel, in so far as appears from Mr. Malloy's testimony, both on direct and on cross-examination:

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TABLE No. I.

Wells Testified to by H. T. Malloy.

Transcript page	Name	No. of wells	Depth	Capacity	Water-bearing gravel
175	I. H. W. Company	3	45 to 72 feet	No test	37 feet.
176	Cody		100 feet	40 inches	45 to 57 feet.
178	Jap		75 feet	20 inches	
179	On Hill		185 feet	Windmill	
180		2		Windmill	
180	O. P. W. Company, Highland avenue		100 feet		
185	City W. Company, Seventh and Ozone streets		Over 100 feet		10 feet.
188	City W. Company, Longfellow and Marine streets	4	80 feet		10 feet.
190	City W. Company, Indiana and Ballona streets		80 feet		10 feet.
191	City W. Company, Elena and Compton streets	2	260 feet		126 feet.
205	McLaughlin		90 to 100 feet	40 to 50 inches	
205	Sweeney		110 feet	50 to 60 inches	
205	Palms W. Company		360 feet	90 inches	26 feet.
206	Whitworth		400 feet	80 inches	50 to 60 feet.
206	Sherman	3 or 4	460 feet	50 to 60 inches each	50 to 60 feet.
208	Hammel & Denker	2	300 feet	Big stream	
209	Burkhart		180 feet	Sure good well	40 feet.
209	Country Club		Over 100 feet	Good well	30 feet.
210	Sawtelle W. Company	2	250 feet	Pretty good	20 feet.
211	S. M. W. Company	4	280 feet	30 to 35 inches	36 feet.
212	Colorado and Cambridge streets		200 feet	27 to 30 inches	
212	Another at Colorado and Cambridge streets		80 feet	30 inches	
212	Malloy		180 feet	75 inches	65 feet.
212	Near Simon's brickyard		300 feet	75 inches if larger bore	30 feet.
219	Denker	2	200 feet	Not much good	
220	¼ mile south of Sawtelle W. Company		200 feet	No water	
220	1 block from S. M. W. Company		500 feet	No water	
220	¼ mile west of S. M. W. Company		400 feet	2 or 3 inches	
221	Nevada avenue		200 feet	Scarcely any water	
222	Pico street	2	200 feet	Streak surface water	

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222	South of stream		300 feet	1 inch	
222	South of stream		500 feet	1 inch	
222	O. P. W. Company		360 feet	6 to 10 inches	6 feet.
223	Shallow flat district		110 to 115 feet	Never paid to pump	
223	R. R. Company		400 feet	Very little water	
224	Palms W. Company		600 feet	Never pumped	
224	Charnock		200 feet	A little water	
225	Santa Monica canyon		100 feet	Not very good well	
	Cross-examination.				
227	Jap			15 to 20 inches	
228	Cody			40 inches, with larger pump would pump more	
232	Lachenmyer			Nice big stream, more than 60 inches	15 feet.
234	Miller			Couldn't pump it dry	35 feet.
248	Twenty-sixth street			Domestic	
249	Nonpareil Laundry			30 inches	
250	Hackett			Windmill	
251	Brown Bros.			Good well	
252	F. King			Small well	
252	Coe			Good well	25 feet.
253	Howard		300 feet	25 to 27 inches	
253	Bernard			50 to 60 inches	
253	Sabicihi		100 feet	Never tested	Lots of gravel.
254	Between Bernard and Sabicihi		300 feet	Used for irrigating; good well	
255	Lot 12, block 200, Villa farms		80 feet	30 inches	
256	Sweet			10 inches	Good.
256	Carpenter & Dexter		270 feet	Pumps 10 inches, could develop much more	40 feet.
260	Hollwedel			Domestic	Good gravel.
278	City Water Company ("Dandy")			Pumps not big enough to take water out	36 to 160 feet.

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These wells are not all pumped at the same time nor to their full capacity. It would be most misleading to say that the amount of water being pumped in this vicinity may be ascertained by simply adding together the capacities of these various wells. The table, however, does show the extent to which it has been possible hitherto to pump water in and about Santa Monica.

Mr. Malloy testified that there is an area of water-bearing land containing about 100 acres, commencing at a point about 700 or 800 feet south and east of the Irwin Heights Water Company's plant and extending in a southerly direction. He testified that, in his opinion, two wells can be advantageously sunk in each five acres of this tract, and that between 50 and 60 miner's inches per well can be thus developed, with a total possibility of developing between 2,000 and 2,400 inches of water on this tract. The well known as the "Dandy," recently installed by City Water Company of Ocean Park, having a capacity in excess of 100 miner's inches, was bored in this territory.

Mr. Malloy further testified that there are about 50 acres of water-bearing lands near the easterly city limits of Santa Monica, near the Southern Pacific Company's yards, in which only one or two wells have hitherto been dug. One of these wells belongs to Mr. Malloy and produces 75 miner's inches of water. Judging from his own well and a few others which he dug in this vicinity, Mr. Malloy testified that, in his opinion, about three wells could be dug on each five acres of this land, and that they would produce an average of about 55 miner's inches of water per well, making a total of 1,650 miner's inches for this property.

Mr. Malloy also referred to the lands owned by the Baker Estate, which he considers to be water bearing and which now have wells on both sides. It appears from the testimony of Mayor T. H. Dudley that there are 100 acres in this tract.

Mayor Dudley testified that the market value of the lands first hereinbefore referred to lying easterly and southerly of the Water company's property have a market value of between $1,500.00 and $2,000.00 per acre, and that these lands can actually be bought for this amount. He referred to the fact that the property on which the City Water Company's "Dandy" well is located is a part of this area and that it was purchased three or four years ago at $1,000.00 per acre for a tract of five acres. He testified that the land owners in this vicinity are now asking $1,500.00 per acre for their land. He further testified that the Baker Estate property was appraised one year ago at $1,500.00 per acre and that it could now be bought for $2,000.00 per acre. He further testified that the market value of the fifty acres owned partly by Mr. Malloy and partly by his neighbors is $2,000.00 per acre.

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Mr. Nelson Taylor, appearing in behalf of the city of Santa Monica, presented computations showing that water can be delivered from Mr. Malloy's 75-inch well into the Water company's reservoir at less cost than that incurred by the Water company, and he testified that water will flow by gravity from the Irwin Heights Water Company's reservoir to the reservoir now jointly used by Ocean Park Water Company and City Water Company of Ocean Park. There is nothing to show that it would cost materially more to pump water from the tract of land lying southerly and easterly of the property of Irwin Heights Water Company.

Based on this evidence, the city contends that the next available source is the water-bearing lands testified to by Mr. Malloy, that the cost of water pumped from these lands, based on the cost of purchasing the land, installing the necessary machinery and transmitting the water thus pumped, would be as little or less than the present cost to Irwin Heights Water Company, Ocean Park Water Company and City Water Company of Ocean Park, and hence concludes that no substantial value should be assigned to the rights to pump water claimed by these water companies.

I am satisfied from Mr. Malloy's testimony that additional water in the amounts indicated by him can be developed in the parcels of property to which he referred as water-bearing lands. The water companies in these proceedings, however, take the position that such waters can not be pumped without injuriously affecting their own supply, and that any person now undertaking to pump water from these lands could be enjoined from doing so by the present companies. The water companies fortify themselves in this contention by the testimony of witnesses Trask and Burns, who testified that in their judgment the safe pumping limit in this basin has been reached, and that pumping from additional wells will result in depriving the present water companies of a portion of the water to which they claim to be entitled. The opinion of these witnesses is not based on personal observation but on the testimony of other witnesses who preceded them. Mr. Trask and Mr. Burns did not have the advantage of hearing the testimony of the witnesses who followed them and who testified in behalf of the city of Santa Monica. The testimony of Mr. Trask and Mr. Burns was based primarily on the following testimony with reference to a depletion of water supply in the Santa Monica basin:

(*a*) *Irwin Heights Water Company's wells.*

Mr. C. C. Towner testified that the water level in the excavation referred to as a reservoir into which water flows from Well No. 4, has gone down six feet in the last eight years. The testimony seems to indicate, however, that the wells of Irwin Heights Water Company are not located on either the northern or the southern main gravel strata.

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This conclusion is fortified by the fact that the quality of the water produced by this company is different from that produced by Ocean Park Water Company or City Water Company of Ocean Park, leading to the conclusion that the source of water must be different. Hence, testimony with reference to the condition of these particular wells can not be taken as indicative of general conditions in this basin and particularly of conditions with reference to the water in the main gravel strata.

(*b*) *Mr. Malloy's testimony as to surface waters.*

Mr. Malloy testified, on direct examination by the water companies, that there has been a lowering of the water plane during recent years in some places as much as fifteen feet, and that in some cases, wells which he dug have gone entirely dry. On later re-direct examination by the water companies, however, he explained that he was referring to surface waters, that these waters are about the only ones which have been affected in the last twenty-five years and that in the lower strata to which he now goes when he digs wells, he finds no difference. He explained that in this basin clay beds lie between the various strata and that in the Santa Monica basin there is no connection to speak of between the various strata.

(*c*) *Mr. C. H. Mellen's testimony.*

Mr. C. H. Mellen, general manager of Ocean Park Water Company, testified that there has been a gradual lowering of the water plane in this basin and that the water has not returned to the point where it was eight years ago.

Thereafter, after Mr. Trask and Mr. Burns had testified, it developed from the testimony of Mr. Edwin Hill, who has been employed for ten years by Ocean Park Water Company as pipe fitter and pump operator, that the water level in the company's Rose avenue pumping plant is three feet higher than it was last year, and is higher today than it was nine years ago. Mr. Hill was frequently lowered into this well and based his conclusion on the water level with reference to an old casing in the well. He testified that the water level in the company's Rose avenue well is about eighteen inches higher now than it was nine years ago. Referring to the Highland avenue plant of Ocean Park Water Company, Mr. Hill testified that he has run this plant as long as it has been run, being between five and six years, and that the water level in this plant also has increased about three feet in the last two years.

I see no reason for not giving full credence to Mr. Hill's testimony on this point. He had actual charge of the operations of these pumps and actually went down into the wells from time to time, so that

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he has first hand information with reference to the level of the water therein.

As an illustration of what is actually done in this community in the development of additional water, I desire to refer again to the experience of City Water Company of Ocean Park. When that company's growing business required the development of additional water two or three years ago, the company bought five acres in the area south and southeast of Irwin Heights Water Company's property, hereinbefore referred to, paying $1,000.00 per acre. The company spent $2,000.00 for the boring of two wells, one of which is the "Dandy," and has a capacity of over 100 miner's inches. The testimony shows that while the water level in the old wells of City Water Company of Ocean Park and of Ocean Park Water Company, which wells are close together, was lowered while the wells were being pumped hard, during the summer two or three years ago, the pumping of water from the "Dandy" well has not affected the water level in any of the wells of Irwin Heights Water Company, City Water Company of Ocean Park or Ocean Park Water Company.

I desire also to draw attention to the fact that notwithstanding the development of the large number of wells in this basin testified to by Mr. Malloy, there is no evidence that a single injunction proceeding or damage suit has been brought. That the owners of lands over the water-bearing strata have the right to enjoin the taking of water from this area, if injury is done, or at least, in the case of water appropriated for public use, to secure damages if water is taken from this area, is clearly established in this State: *Katz* vs. *Walkishaw*, 141 Cal. 116; *Cohen* vs. *La Cañada Land and Water Company*, 142 Cal. 437; *Burr* vs. *Maclay Rancho Water Company*, 160 Cal. 268; *Hudson* vs. *Dailey*, 156 Cal. 617.

While it is true that Irwin Heights Water Company and the other water companies who have pumped water for five years and appropriated it for public use, would undoubtedly prevail as against any attempt from those which have stood by and permitted this appropriation to be made, to enjoin the further pumping of water (*Katz* vs. *Walkinshaw*, 141 Cal. 116, 136; *Newport* vs. *Temescal Water Company*, 149 Cal. 531; *Barton* vs. *Riverside Water Company*, 155 Cal. 509; *Miller & Lux* vs. *Enterprise Canal and Irrigation Company*, 49 Cal. 251, 256, decided February 19, 1915), the evidence in this case does not satisfy me that the facts in connection with the water situation in this basin are such that these water companies, in turn, could successfully bring action to enjoin another appropriator of water for public use from sinking wells in the water-bearing lands referred to by Mr. Malloy and taking therefrom water for public use in the city of Santa Monica.

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Even assuming that it is physically possible to develop these additional waters, which I find to be the fact, and that the new appropriator for public use could successfully withstand the efforts of the existing water companies to enjoin such development, which I believe from the facts as shown in these proceedings would be the case, nevertheless, the fact that the existing water companies have an actually developed supply of water as contrasted with a probability, however certain it may seem, of developing water, and that their rights to the continued use of the water which they have heretofore developed and used are secure, except possibly against land owners who may be able to recover damages if they can prove a diversion from their lands to their injury, are facts which add value to the property of these water companies, and for which just compensation must be paid.

4. Going Value.

The Water company presents a claim of $7,913.00 for going value. Mr. C. S. Burns, testifying in support of this claim, stated that this sum represents the estimated difference between the value to a purchaser of the plant as it now stands with its business and the cost to him of building a plant to serve the same territory and to build up the business. This estimate is based on a number of assumptions which it is not necessary here to analyze.

The annual report of Irwin Heights Water Company for the year ending December 31, 1913, shows that the operating revenue for the year was $10,286.25 and that the operating expense, not including interest on the investment or depreciation, was $7,365.53. The Water company set up no depreciation fund in 1913.

The Water company's annual report for the year ending December 31, 1914, shows that the operating revenue was $11,645.17 and that the operating expense, not including interest on the investment or depreciation, was $8,819.70. The Water company set up during this year a depreciation fund amounting to $3,625.38. The total of operating expenses and depreciation as thus indicated was $12,445.08, or $799.91 more than the operating revenue. In these computations no allowance is made for interest on the investment.

The Water company has applied to the Railroad Commission for an order authorizing the company to increase its rates and claims in its brief on file in the rate case that on the basis of an investment of $80,433.00 "it is apparent that a horizontal raise of fifty per cent will be necessary."

The rates now charged by Irwin Heights Water Company are the same as those which were established by Ordinance No. 48 on February 27, 1908, for the year 1908-09. Under the provisions of section 1 of article XIV of the constitution of this State, such rates "shall con-

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tinue in force for one year and no longer." There is no record of any attempt on the part of the Water company to increase the rates thus established.

In determining the value of the property of a public utility, subject to regulation with reference to its rates by a public authority, careful consideration must be given to the rates which have been or may be established by the constituted authorities. A public utility is worth no more than fair rates established by competent public authority will justify, unless something additional is allowed for the possibility of future growth and added revenues coming therefrom. The evidence shows that the Water company is serving a territory a considerable portion of which is sparsely settled. The Marsh tract, heretofore referred to, is a clear case in point. The distributing mains for which a value of some $10,000.00 is claimed by the Water company under the head of "reproduction cost," serve only a single consumer, and there is no immediate prospect of additional customers. That rates will be established so as to yield the Water company the usual interest on this $10,000.00, is of course, impossible: *San Diego Land and Town Company* vs. *Jasper,* 189 U. S. 439, 446, 447; *Southern Pacific Company* vs. *Bartine,* 170 Fed, 725, 767.

These are matters to which careful consideration must be given in determining the fair value of the property either for rate making or for condemnation.

In its brief in Case No. 698, *Freeman* vs. *Irwin Heights Water Company,* the rate case, the Water company states that in its opinion the rate should be based on $80,433.00, which represents, according to the Water company, "the actual investment as nearly as can be ascertained." A purchaser naturally expects a return on the purchase price. If he knew that he could not get a return thereon, he would simply pay so much less for the property. In the present case we have a property which can not earn a return on the cost to reproduce it for the reason that it is overbuilt for the needs of the present consumers. If $80,433.00, even though the use of this amount will necessitate an increase of 50 per cent in the rate which has been charged for six years, is a fair sum to be used for the establishment of rates, it seems difficult to understand why a sum materially in excess of this amount should be claimed for the purpose of condemnation. It must be borne in mind that the sum of $80,433.00, even if it accurately represents the original investment, makes no allowance for the depreciated condition of the property.

As has frequently been said by this Commission in these condemnation cases, the public can afford to be generous when it takes public utility property from the owners thereof. The Railroad Commission

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generally finds a value in these cases somewhat in excess of the value which it could allow in rate making cases, and the finding in this case will not be an exception to this rule.

I recommend the following findings:

FINDINGS.

City of Santa Monica, an incorporated city, having filed with the Railroad Commission a petition setting forth the intention of said city to acquire under eminent domain proceedings or otherwise, the lands, property and rights of Irwin Heights Water Company, a public utility operating within the boundaries of said city, and asking the Railroad Commission to fix and determine the just compensation to be paid to Irwin Heights Water Company for the public utility and land, property and rights thereof, and public hearings having been held, and the Commissioner who heard the evidence having made a personal inspection of the wells and reservoirs and a portion of the distributing system of said Irwin Heights Water Company, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by city of Santa Monica to Irwin Heights Water Company for all of said company's lands, property and rights, other than the right to be a corporation, as said lands, property and rights are described in Exhibit No. 1, which is attached hereto and made a part hereof, is the sum of seventy-five thousand dollars ($75,000.00).

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

EXHIBIT No. 1.

All the lands, property and rights, other than the right to be a corporation, of Irwin Heights Water Company, more specifically described as follows, to wit:

Lands.

Parcel No. 1.

That part of lot seven (7) of Mrs. S. L. Session's subdivision of block thirty (30) and part of block forty-seven (47) of the Lucas tract, in the Rancho La Ballona, as per map recorded in book 11, page 24, Miscellaneous Records of the recorder's office of the county of Los Angeles, State of California, described as beginning at the northeasterly corner of said lot seven (7), thence south thirty-five degrees (35°) twelve minutes (12′) east four hundred thirty (430) feet to the southeast corner of said lot; thence south fifty-six degrees (56°) forty-eight minutes (48′) west three hundred eighty-two and seventy-six hundredths (382.76) feet; thence north thirty-five degrees (35°) twelve minutes (12′) west four hundred eighteen (418) feet, more or less, to the southeasterly line of Ballona avenue; thence north fifty-four degrees (54°)

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twenty minutes (20') east three hundred eighty-two and seventy-five hundredths (382.75) feet to the place of beginning, containing four (4) acres, more or less.

Parcel No. 2.

Those portions of lot eight (8) in block forty-five (45) and lot sixteen (16) in block forty-six (46) in the town of East Santa Monica, county of Los Angeles, State of California, according to map of said East Santa Monica recorded in book 17, pages 95, 96, 97 and 98, Miscellaneous Records of said recorder's office, which was conveyed to Joseph Burkhard by deed to him from R. A. Crippen and Ruth D. Crippen, his wife, recorded in book 847, page 16, of Deeds, of said recorder's office. Said portion of lot 8 hereby conveyed being that portion thereof lying westerly of a straight line commencing at a point in the southerly line of said lot eight (8), distant two hundred fifty-two (252) feet easterly from the easterly line of Logan avenue, and drawn north in such direction that it will intersect the northerly line of lot thirteen (13) in said block forty-five (45) at a point distant three hundred sixty-six (366) feet easterly from the easterly line of said Logan avenue. Said portion of lot 16 hereby conveyed being that portion thereof lying westerly of a straight line commencing at a point in the northerly line of said lot sixteen (16) distant two hundred fifty-two and three hundredths (252.03) feet easterly from said Logan avenue, and extending south in such direction as would reach a point fifteen (15) feet north from the southerly line of lot 11 in said block forty-six (46), distant one hundred (100) feet from the easterly line of said Logan avenue. Excepting from this conveyance the easterly thirty (30) foot strip of said lot sixteen (16) adjoining and abutting upon said Logan avenue.

Parcel No. 3.

A certain right of way for pipe line over those portions of lots fifteen (15), fourteen (14), thirteen (13), twelve (12), and eleven (11) of block forty-six and lot two (2) of block forty-seven (47) in said East Santa Monica, according to the official map thereof, which were conveyed by deed of Crippen and wife to Joseph Burkhard, said pipe line being a single pipe line extending from said lot sixteen (16) to said lot seven (7), the right of way herein granted being the same right of way heretofore conveyed to C. C. Towner and W. A. Irwin by said Joseph Burkhard.

Parcel No. 4.

A certain right of way and easement over a strip of land ten feet wide lying across Sherman avenue, Charles street, and John street, and those certain lots, pieces or parcels of land situate, lying and being in the Rancho La Ballena, and being lots twenty (20), twenty-six (26), thirty (30), thirty-three (33), thirty-eight (38) and thirty-nine (39), in Van Every's addition to East Santa Monica, according to the plat of said addition recorded in book 72 at pages 63 and 65, Miscellaneous Records, in the recorder's office of the county of Los Angeles, State of California, as more particularly described in a certain instrument dated April 30, 1904, between H. L. White, of Los Angeles, California, as party of the first part, and William A. Irwin and C. C. Towner, as parties of the second part, now of record in the recorder's office of said county.

Parcel No. 5.

Certain rights of way referred to in the testimony of C. C. Towner in Application No. 1562, pages 91 and 92 of the transcript, being referred to as follows:

(*a*) Right of way for pipe on Clover Hill tract off Ashland avenue.

(*b*) Right of way for pipe across Mr. I. E. Bell's lot on Sixteenth street.

(*c*) Right of way for pipe across lots 1 and 2, block "G" of Ocean Spray tract.

(*d*) Right of way for pipe line across lots 13 and 14, of block 40, East Santa Monica.

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Physical Structures and Improvements.

Item	Quantity	Unit
Pump plant at Marine and Hatch streets—		
Plant building, frame	1	Each
75 H.P. Type C West Ind. motor, installed with foundations complete	1	Each
B.J. 2-stage 6" centrifugal pump, installed with foundations, complete	1	Each
Well No. 1, 65' of 12" No. 14 casing with cribbing	1	Each
No. 2, 60' of 12" No. 14 casing	1	Each
No. 2, 39' of 5' concrete pipe, reinforced	1	Each
No. 3, 15' 5' concrete pipe, reinforced	1	Each
No. 4, 60' of 12" No. 14 casing	1	Each
56' 12" 2-ply leather belt	1	Each
Collecting basin or sump	1	Each
Non-operative or emergency equipment—		
50 H.P. 60-cycle 2,080 volt motor, not installed	1	Each
5" B.J. 2-stage horizontal centrifugal pump, not installed	1	Each
Concrete reservoir at Pearl and Eighteenth streets—		
Reservoir proper, excavation and concrete	All	All
Roof and motor shed, etc.	All	All
Booster pump plant at reservoir—		
7½ H.P. motor installed, complete	1	Each
3" B.J. horizontal centrifugal 1-stage pump, complete	1	Each
54' 6" 2-ply leather belting, complete	1	Each
Pipe and fittings	All	All
R.W. tank 18' diameter by 12' high on 40' frame tower	1	Each
Concrete footings, complete	6	Cu.yds
Distribution system—		
¾" S.S. black pipe, dipped	212	Foot
1" S.S. black pipe	1,917	Foot
1¼" S.S. black pipe	1,566	Foot
1½" S.S. black pipe	8,303	Foot
2" S.S. black pipe	37,509	Foot
3" S.S. black pipe	1,830	Foot
4" S.S. black pipe	100	Foot
¾" galvanized S.S. pipe	1,386	Foot
1" galvanized S.S. pipe	240	Foot
4" cement pipe	1,070	Foot
3" O.D. casing (includes 3" I.D.)	4,224	Foot
3½" O.D. casing		
4" O.D. casing	30,798	Foot
6" O.D. casing	9,095	Foot
8" O.D. casing	75	Foot
4" R.S. pipe (No. 11 gauge drive)	8,088	Foot
5" R.S. pipe (No. 14 gauge drive)	2,773	Foot
6" R.S. pipe (No. 14 gauge drive)	8,082	Foot
8" R.S. pipe (No. 14 gauge drive)	4,551	Foot
12½" R.S. pipe (No. 14 gauge drive)	4,085	Foot
Large gate and valves	1	Lot
Meters—		
⅝" meters, principally Trident	75	Each
¾" meters, principally Trident	39	Each
1" meters, principally Trident	2	Each
1½" meters, principally Trident	4	Each
2" meters, principally Trident	10	Each

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Physical Structures and Improvements—Continued.

Item	Quantity	Unit
Services—		
¾"	253	Each
¾"	415	Each
1"	5	Each
1½"	20	Each
2"	36	Each
3"	2	Each
4"	1	Each
Tools and stock on hand	1	Lot
Manhole	1	Lot
Auto truck, "Great Western" 40 H.P. (P.V.).		
Portable garage	1	Lot
Dayton couplings	1,000	Each
Iron shut-off boxes	100	Each

Water Rights.

All water rights, including the right to pump from 60 to 62 miner's inches from the company's wells, owned by Irwin Heights Water Company.

Decision No. 2548.

IN THE MATTER OF THE APPLICATION OF CITY OF SANTA MONICA FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO CITY WATER COMPANY OF OCEAN PARK FOR A PORTION OF ITS LANDS, PROPERTY AND RIGHTS.

Application No. 1564.

Decided June 30, 1915.

City of Santa Monica, in its endeavor to acquire the various water systems at present in operation within its limits, applies to this Commission to fix the compensaton to be paid for that portion of the system of the City Water Company of Ocean Park lying within the limits of Santa Monica, in connection with which investigation the Commission considers this property under the following heads: Lands, physical structures and improvements, water rights, going value, and severance damages, and in conclusion the sum of $82,500.00 is established as the proper price to be paid for the water properties and the sum of $25,000.00 as severance damages, making a total of $107,500.00 for the properties.

With reference to water rights the Commission's decision in Application No. 1562, being application of city of Santa Monica for a valuation of Irwin Heights Water Company referred to for review of allowances under this head:

Going value: That the water company herein is enjoying a revenue which permits of a return upon its invested capital somewhat in excess of what this Commission would allow should it be called upon to establish a schedule of rates for this system and accordingly, though this full amount can not be considered, this utility is in every way a going concern and allowances for going value must be made accordingly.

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Severance damages: Of the water company's property, one-third is in Santa Monica and two-thirds in Venice; that the reduction in operating expenses and overhead by the severance of the Santa Monica portion will not compensate the water company for the reduction in revenue, accordingly $25,000.00 is determined upon as a proper amount covering this item.

Victor R. McLucas and *John Mullen*, for City of Santa Monica.

Anderson & Anderson, for City Water Company of Ocean Park.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding to fix and determine the just compensation to be paid by City of Santa Monica to City Water Company of Ocean Park, a public utility engaged in the business of selling water for domestic and municipal purposes in the city of Venice and the city of Santa Monica, for that portion of its lands, property and rights which are located in the city of Santa Monica. This proceeding is brought under the provisions of section 47 of the Public Utilities Act.

The petition of the City of Santa Monica alleges in effect that the city is a municipal corporation organized and existing under and by virtue of the constitution and statutes of this State; that the city has a population of approximately 12,000; that the inhabitants derive their water for domestic use from various wells and springs in and around the city; that water is supplied from said sources by various private water utilities including City Water Company of Ocean Park; that by reason of the city's rapid growth it is difficult for these utilities to make the necessary extensions, additions and replacements; that the city council of Santa Monica is of the opinion that the public interest and convenience of the city demand the acquisition and construction of a municipal water system; that the City of Santa Monica intends to acquire by eminent domain proceedings the properties of City Water Company of Ocean Park located in Santa Monica; and that the necessary ordinance for the institution of these proceedings has been passed by the common council of the city of Santa Monica.

At the hearing in this proceeding, held in the city of Santa Monica, it was stipulated that the evidence in Application No. 1561, being a similar proceeding with reference to the property of Ocean Park Water Company and Application No. 1562, being a similar proceeding with reference to the property of Irwin Heights Water Company, might be considered as being presented in this proceeding. Briefs have been filed and this proceeding is now ready for decision.

City Water Company of Ocean Park, hereinafter referred to as the City water company, at present secures its water primarily from a well which was dug some three years ago in Venice and which was referred to in the present proceedings as the "Dandy" well. The pump in this

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well has a capacity of 100 miner's inches and the well is said to be capable of supplying even more water. The City water company does not own a reservoir but has leased the right to use in common with Ocean Park Water Company the latter company's reservoir located on Beverly avenue between Central avenue and Kensington road in Santa Monica. The City water company owns a distributing system from which it serves customers in the city of Venice and in the extreme southwesterly portion of the city of Santa Monica. The customers in Santa Monica are mostly located in the thickly settled territory between the Ocean front on the west and Trolley way on the east, Strand street on the north and the city limits on the south.

Very nearly one-third of City water company's property and customers are located in Santa Monica with the remaining two-thirds in Venice.

Prior to three years ago, City water company secured its water from two pumping plants located in Santa Monica on or near the southerly city limits. These pumping plants are known respectively as the Ozone plant (No. 2) located at Ozone and Seventh streets, and the Marine street plant (No. 3) located at Longfellow and Marine streets. The Ozone street plant consists of five wells connected to one pump. The Marine street plant consists of nine wells connected to one pump. Subsequent to the bringing in of the Dandy well these two plants have been used very little. The evidence shows that the Marine street plant was pumped in the summer of 1914 for a period not over one month, by reason of a breakdown, and that the Ozone street plant has not been pumped at all during the last two years and is practically abandoned.

The city of Santa Monica now asks the Railroad Commission to fix and determine the just compensation to be paid by it for the City water company's property in Santa Monica, including the Ozone street wells and the Marine street wells. In addition to determining the fair value of this property it will also be necessary to determine the severance damages, which will be caused to the City water company by reason of the taking of the Santa Monica portion of its property.

By agreement between the parties the city filed at the hearing an amended inventory of the City water company's property, which amended inventory was substituted for the inventory attached to the petition herein. It was stipulated at the hearing that such additional property as might be shown by the evidence might be added to the inventory. The evidence shows that the following property should be added to the city's amended inventory:

27 Fire hydrants.
48 Brick and iron manholes.
13 Wood manholes.

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The evidence also shows that one well at the Ozone pumping plant which was assumed to be 76 feet deep, is in reality 450 feet deep, thus necessitating an additional allowance for the additional depth.

Mr. G. M. Jones, the City water company's president, testified that in his judgment the fair value of the property to be taken by the city of Santa Monica, including severance damages to the portion of the property not taken, is $125,000.00. The city of Santa Monica in its brief contends that the total value to be allowed should be $51,579.75, which value apparently does not include severance damages.

I shall discuss the value of the property under the following heads:

1. Lands.
2. Physical Structures and Improvements.
3. Water Rights.
4. Going Value.
5. Severance Damages.

I.

Lands.

The City of Santa Monica accepts the value of the lands of the City water company as testified to by Mr. G. M. Jones, as follows:

Lot one, block five, Fountain Glen tract No. 2	$4,000 00
Lot one, block seven, Fountain Glen tract No. 3	1,550 00
Lots one and two, block eight, Fountain Glen tract No. 3	1,500 00
Lots fifty-one, fifty-two and fifty-three, block forty-two, East Santa Monica tract	4,500 00
Total	$12,550 00

The foregoing values do not include an allowance for developed water.

II.

Physical Structures and Improvements.

Mr. C. S. Burns, appearing in behalf of City water company, presented an estimate of the depreciated reproduction value of the physical structures and improvements of City water company totaling $69,376.00. No estimate of reproduction value new was presented on behalf of City water company.

Mr. James Armstrong, one of the Railroad Commission's assistant hydraulic engineers, testified that the reproduction value new of the physical structures and improvements to be taken by the city is $49,972.00 and that the depreciated reproduction cost, as estimated by him, is $37,565.00. By including the items which were omitted and which have hereinbefore been referred to the estimate of reproduction cost new is increased to $52,797.00, and the estimate of depreciated reproduction value is increased to $39,864.00.

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The chief difference between the estimate of Mr. Burns and that of Mr. Armstrong is in the item of paving. The estimate of Mr. Burns includes an allowance for all paving now lying over the City water company's mains and services, although most of this paving was laid by the city subsequent to the installation of the mains and services, without any expense to City water company. Mr. Armstrong included an allowance for only such paving as was cut through by City water company in laying its mains and services. Reference is hereby made to this Commission's Decision No. 2279 rendered on April 9, 1915, in Application No. 1141, being the *application of Marin Municipal Water District for an order fixing and determining the just compensation to be paid to Marin Water and Power Company for its lands, property and rights,* in which proceeding the Railroad Commission lays down the rule that allowance shall not be made for paving which was laid over a water company's mains and services by public authorities without expense to the water company. The reasons why such paving does not make the water system more valuable, as well as the authorities supporting the Railroad Commission's conclusions, are therein set out in full.

The other chief differences between the appraisal of Mr. Burns and the appraisal of Mr. Armstrong are that Mr. Burns included an allowance of $2,000.00 for preliminary expenses, which item Mr. Armstrong covered in his allowance for overhead accounts; that Mr. Burns applied a uniform overhead account of 19 per cent to the unit price used by Mr. Armstrong, while Mr. Armstrong included in his unit price a number of items generally included in overhead percentages and applied overhead percentages from 8 to 16 per cent to his unit price; that Mr. Burns made an additional allowance of 5 per cent on the estimated cost of the pipe system, for special fittings, for which items allowance was made by Mr. Armstrong in his unit price for pipe, which unit price Mr. Burns accepted; and that Mr. Burns applied the sinking fund method of depreciation while Mr. Armstrong applied the straight line method.

The fair allowance to be made for physical structures and improvements will probably be somewhat in excess of that presented by Mr. Armstrong and considerably less than that presented by Mr. Burns.

III.

Water Rights.

As already indicated, the city is not seeking to condemn City water company's present main source of supply in Venice. The city seeks to acquire the Ozone plant, which is practically abandoned, and the Marine street plant which, while claimed by City water company as a reserve, has been pumped about one month in the last two years. The

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testimony shows that the wells at each of these plants were dug more than five years prior to July, 1913, at which time City water company began to pump from the Dandy well in Venice. City water company claims that the Ozone street wells and the Marine street wells had a total capacity, when pumped, of 72.6 miner's inches, of which 26.35 miner's inches is assignable to the Ozone street wells and the remaining number of miner's inches to the Marine street wells. There is no direct evidence as to the amount of water which was actually delivered from these wells and used by consumers at any given time although the record shows that during portions of the summer months the wells were pumped to capacity. The record shows that during the month of August, 1914, City water company used approximately 41,222,910 gallons of water, amounting to about 103 miner's inches, of which amount approximately one-third was used in Santa Monica. This evidence, however, does not show how much water was actually being used from the Ozone and Marine street wells while they were being pumped.

The question of the water conditions in and around Santa Monica and of the elements to be considered in estimating such value, if any, as should be assigned to the right to divert percolating water in this vicinity were considered in Application No. 1562, Irwin Heights Water Company, in which application the decision is this day being rendered. It would be surplusage to repeat here what was said in Application No. 1562 and reference to the same is hereby made.

IV.

Going Value.

Mr. C. S. Burns first presented in this proceeding, as well as in Applications No. 1561 and No. 1562, an estimate of going concern value for each company, based on a consolidated operation of all three companies. It seems clear that such estimate can have but little value. City water company thereafter presented, through Mr. Burns, a separate computation based on City water company's operation alone, which computation was marked Exhibit No. 2 of City water company. In this computation a claim is made for $31,175.00 for going value, less an amount not specified, representing interest during construction. This claim is presented on the comparative plant method. Mr. Burns testified that the going value used by him is the difference between the value to a purchaser of the plant as it now stands and the cost of building a plant to serve the same territory and of building up the business.

In this computation, Mr. Burns assumes a construction period of two years. Of the sum of $31.175.00, $7,865.00 represents estimated present worth of excess value of going plant during the assumed first year of construction and $8,346.00 represents such estimated present worth during the assumed second year of construction. Mr. Armstrong

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testified, and I believe properly, that by no means should a construction period in excess of one year be allowed with reference to this company's property in Santa Monica. The amount claimed by City water company must accordingly be reduced by at least this extent. I desire to draw attention also to the fact that the computation assumed the continuance of the present rates and that the evidence shows that these rates will yield a return considerably in excess of the return generally allowed by the Railroad Commission in such cases. The annual report of City water company for the year ending December 31, 1914, shows an operating revenue from the company's property in both Venice and Santa Monica amounting to $52,600.73. Operating expenses during this year are stated to be $17,780.90. An amount of $10,000.00 was arbitrarily set aside in the depreciation fund. That this amount is considerably in excess of the sum which should normally be set aside in the depreciation fund is shown by Mr. Armstrong's testimony in Case No. 700, *Strickler* vs. *City Water Company*, in which case he testified that a normal sum to be set aside annually for depreciation on the 4 per cent sinking fund basis would be $2,911.36, of which amount $858.46 is assignable to the Santa Monica property and $2,042.90 to the Venice property. By adding the amount thus estimated by Mr. Armstrong for normal depreciation to the operating expenses for the year 1914 a total of $20,692.26 appears for operating and depreciation expenses, leaving a balance of $31,908.47 for return on the investment. In Case No. 700, Mr. Armstrong estimated the fair value of the company's entire lands and physical structures to be $189,546.00. Some additional allowance must undoubtedly be made to this amount for intangibles. It shows that City water company made a return in 1914 of something over 17 per cent on the value tentatively assigned by Mr. Armstrong to the lands and physical structures of City water company. It must be distinctly understood that these figures are merely tentative and that when the necessary allowance is made for intangibles that the per cent of profit will no doubt be reduced. Nevertheless, it is clear that, in any event, City water company is making a return in excess of that usually allowed by the Railroad Commission and that any estimate of going value based on a continuance of these returns is to that extent subject to valid criticism.

City water company unquestionably has a very good business. Its business has a real going value and an appropriate allowance must be made therefor.

V.

Severance Damages.

As has already been indicated, the city intends to acquire only that portion of the property of City water company which is located in the city of Santa Monica. The evidence shows that approximately 30 per

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cent of the company's total physical property is located in Santa Monica and that almost exactly one-third of the total revenue is secured from its customers in Santa Monica. If the Santa Monica property is now severed from the Venice property, City water company will be deprived of the revenue which it has hitherto derived from its customers in Santa Monica. This revenue, under the rates now in effect, amounted in 1914 to approximately $17,533.57. On the other hand, there will be a reduction in interest charges, depreciation and operating expenses. The entire depreciation and interest properly chargeable to the Santa Monica property will be eliminated. A portion of the present operating expenses will also be saved—for instance, the expenditure for maintenance of the distributing system in Santa Monica will be eliminated as well as a portion of the so-called office and overhead expenses. It is quite evident, however, that the reduction under the head of operating expenses, will not be as great proportionally as the reduction in revenue. City water company will continue to need practically the same managerial and operating force as at present. Under these conditions it seems perfectly clear that the total reduction in revenue caused by the severance of the Santa Monica property will not be compensated for by the corresponding reduction in interest, depreciation and operation charge.

City water company presented no definite allowance to be made for severance damages. It is difficult to reach an exact conclusion in a matter of this kind. After careful consideration I have reached the conclusion that it would be fair and reasonable to allow City water company the amount of $25,000.00 for severance damages.

I submit herewith the following findings:

FINDINGS.

City of Santa Monica, an incorporated city, having filed with the Railroad Commission a petition setting forth the intention of said city to acquire under eminent domain proceedings, or otherwise, a portion of the lands, property and rights of City Water Company of Ocean Park, a public utility, and asking the Railroad Commission to fix and determine the just compensation to be paid to City Water Company of Ocean Park for said portion of its lands, property and rights, and public hearings having been held and the Commissioner who heard the evidence having made a personal inspection of the Ozone and Marine street pumping plants, of the reservoir used by said company and a portion of its distributing system, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by City of Santa Monica to City Water Company of Ocean Park for the portion of said company's lands, property and rights, which is specifically described in Exhibit No. 1, attached hereto and made a part of these findings, is the sum of $82,500.00.

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The Railroad Commission further finds as a fact that the just compensation to be paid by City of Santa Monica to City Water Company of Ocean Park for the damages caused to said company's remaining property by reason of the severance of the property described in said Exhibit No. 1, which damages are to be paid by City of Santa Monica in addition to the compensation specified in the preceding paragraph, in case the City of Santa Monica acquires the property described in said Exhibit No. 1, is the sum of $25,000.00, thus increasing the total just compensation to be paid by City of Santa Monica to City Water Company of Ocean Park to $107,500.00.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

EXHIBIT No. 1.

Lands, property and rights of City Water Company of Ocean Park, as follows:

Lands.

Lot 1, block 5, Fountain Glen tract No. 2, Santa Monica.
Lot 1, block 7, Fountain Glen tract No. 3, Santa Monica.
Lots 1 and 2, block 8, Fountain Glen tract No. 3, Santa Monica.
Lots 51, 52 and 53, block 42, East Santa Monica tract, Santa Monica.

Physical Structures and Improvements.

Item	Quantity	Unit
Marine street pumping plant—		
Main pumping building, frame	1	Each
3/16" steel oil tank, 4' diameter by 12' long, with roof	1	Each
Concrete pit for same tank	1	Each
Sand-trap, concrete and special C.I. casting, complete	1	Each
Pumping equipment—		
32 H.P. Fairbanks-Morse C.E. complete, installed with all pipings, fittings and clutch	1	Each
Concrete foundation for same	1	Each
Rumsey Triplex, double acting, single plunger deep well pump installed complete with all pipe and fittings	1	Each
Steel and lumber foundation for same	1	Each
Belting, 40' 12" 6-ply and 72' 6" 6-ply canvas	1	Each
Wells—		
9 16" No. 12 gauged cased wells, total depth	842	Foot
Well pit, 11" diameter by 42½" deep inside, 8" brick walls	1	Each
Tunnels, 3' top, 4' bottom, 1½' high, lumbered with 8 x 8 bents, 8' centers, 44" lagging	184	Each
Meter testing outfit	1	Each
Ozone pumping plant—		
Frame pump building	1	Each
Steel oil tank, 9½' diameter by 2½' high, complete	1	Each
Sand trap, concrete and special C.I. casting	1	Each
Main oil supply tank	1	Each

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Physical Structures and Improvements—Continued.

Item	Quantity	Unit
Pumping equipment—		
20 H.P. Lambert gas engine, with piping and fittings complete	1	Each
Concrete foundation	1	Each
Gould, single acting, Triplex, with all pipings, fittings, etc.	1	Each
Steel and concrete foundation for same	1	Each
Wells—		
5 16″ No. 12 gauge wells, of which four are 76′ deep, and one is 450′ deep	754	Foot
Pit, 8′ 8″ diameter by 34½′ deep, 8″ brick walls with 8′ x 8′ x 8′ arched recess at bottom	1	Each
Tunnel, 4′ bottom, 3′ top, 5′ high, 6″ x 6″ bents with 8′ centers, 2″ x 1″ 2 course lagging	160	Foot
Meters—		
⅝″ Trident	3	Each
¾″ Trident	1	Each
1″ Keystone	1	Each
1″ Trident	1	Each
2″ Trident crest	1	Each
4″ Trident compound	1	Each
Special meter connections with Ocean Park Water Company—		
6″ Trident crest, in manhole	2	Each
8″ Trident crest, in manhole	2	Each
Gate valves, C.I. fittings and connections for above	1	Lot
3 manholes, brick, concrete and steel, for above	1	Lot
Service connections—		
¾″ galvanized services	598	Each
¾″ galvanized services	239	Each
1″ black services	14	Each
2″ black services	28	Each
4″ distribution mains	1	Each
1″ S.S. galvanized pipe	150	Foot
2″ S.S. galvanized pipe	8,758	Foot
2″ S.S. black pipe, dipped	3,172	Foot
4″ S.S. black pipe, dipped	3,972	Foot
4″ S.S. galvanized pipe	410	Foot
4″ O.D. casing, dipped	1,857	Foot
4″ C.I. class B pipe	600	Foot
6″ C.I. class B pipe	3,332	Foot
8″ C.I. class B pipe	65	Foot
8″ O.D. casing, dipped	2,365	Foot
10″ C.I. class B pipe	2,923	Foot
Hydrants	27	
Manholes, brick and iron	48	
Manholes, wood	13	

All water and water rights owned by City Water Company of Ocean Park in connection with or appurtenant to any of the real property hereinbefore described, including water developed on lot 1, block 5, Fountain Glen tract No. 2, and lot 1, block 7, Fountain Glen tract No. 3.

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DECISION NO. 2549.

IN THE MATTER OF THE APPLICATION OF THE CITY OF SANTA MONICA FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO OCEAN PARK WATER COMPANY FOR ITS LANDS, PROPERTY AND RIGHTS.

Application No. 1561.

Decided June 30, 1915.

City of Santa Monica applies to the Railroad Commission to fix the just compensation to be paid for the property and rights of the Ocean Park Water Company, in connection with which investigation the properties of the water company are considered under four heads, as follows: Lands, physical structures and improvements, water rights and going value, in the final summary of which the sum of $77,500.00 is determined upon as a just and reasonable price to be paid for the properties in question.

Water rights: For review of allowances under this head reference is made to decision in Application No. 1562, city of Santa Monica, for a valuation of the Irwin Heights Water Company, though as regards the water companies Rose avenue well, the only water that has been pumped therefrom has been used right on the grounds and never conveyed elsewhere, and accordingly no water right has as yet been created, nor can a value be allowed therefor.

Going value: That the water company's contention that a going business when sold will always command a bonus is in error, especially if such business is being run at a loss or earning only a very slight profit. The water company herein reports a deficit for the last fiscal year, all of which matters the Commission holds it is obligated to take into consideration when allowing under this head.

Victor R. McLucas and *John Mellen*, for City of Santa Monica.

Tanner, Odell, Odell & Taft, by *S. W. Odell*, for Ocean Park Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a proceeding to fix and determine the just compensation to be paid by city of Santa Monica for the lands, property and rights of Ocean Park Water Company, a public utility, engaged in the business of selling water for domestic, municipal and to a slight extent, for irrigation purposes in the city of Santa Monica and in the city of Venice, Los Angeles County. This proceeding is brought under the provisions of section 47 of the Public Utilities Act.

The petition filed by city of Santa Monica alleges, in effect, that the city is a municipal corporation duly organized and existing under the laws of this State; that it has a population of approximately 12,000 people and that its inhabitants derive water for domestic use from various wells and springs located in and around the city of Santa

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Monica, and owned and operated by certain water companies, including Ocean Park Water Company; that by reason of Santa Monica's rapid growth it has been difficult for the owners of these water systems to secure funds for making the necessary extensions, additions and replacements to their respective systems; that the city council of Santa Monica finds that the public interest and convenience of the city require the acquisition and construction of a municipal water system and that the city of Santa Monica intends to acquire each of said water systems by eminent domain proceedings; and that the necessary ordinance preliminary to the bringing of this proceeding has been adopted by the city council. The city asks that the Railroad Commission fix and determine the just compensation to be paid for the lands, property and rights of Ocean Park Water Company, in accordance with the provisions of section 47 of the Public Utilities Act.

Ocean Park Water Company and Title Guarantee and Trust Company filed their answer herein alleging, in effect, that Title Guarantee and Trust Company is the trustee under a deed of trust issued by Ocean Park Water Company, and denying that Exhibit "B" attached to the application contains a full and accurate statement of the properties of the water company. They allege that they have caused a full and complete inventory of the property to be prepared and that copies of such inventory are attached to the answer, the inventory listing properties in the city of Santa Monica being marked "Exhibit A" and the inventory listing properties in the city of Venice being marked "Exhibit B." Defendants also attach to the answer a statement marked "Exhibit C," giving an inventory and appraisal of property which is claimed to have been necessarily purchased and used in the upbuilding of the business and which is not now in use.

At the public hearings in this proceeding, held in the city of Santa Monica, it was stipulated that the evidence in Application No. 1562, being a similar valuation proceeding affecting Irwin Heights Water Company, and Application No. 1564, being a similar application affecting City Water Company of Ocean Park, might be considered as having been offered in the present proceeding. It was also stipulated that the evidence presented in Case No. 703, *Shelly* vs. *Ocean Park Water Company,* might be considered as having been offered in this proceeding. Briefs were filed and this application is now ready for decision.

Ocean Park Water Company secures its water from two wells, one located in Santa Monica at the intersection of Highland avenue and the city limits between Santa Monica and Venice, and the other located at Seventh street and Rose avenue in Venice. At the Highland avenue plant the company has one bricked well about 8 feet in diameter to a depth of about 40 feet and four wells of a depth of about 30 feet each in the bottom of the first well. This well has been pumped by the

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water company for about 8 years. The Rose avenue well is a 39-inch reinforced concrete cylinder about 40 feet deep, and at the bottom thereof are two 12-inch double cased wells each 30 feet deep. The water company owns a reservoir in Santa Monica, which reservoir is used jointly by Ocean Park Water Company and City Water Company of Ocean Park. City Water Company of Ocean Park owns no reservoir. Ocean Park Water Company owns a distributing system lying in the southwestern portion of the city of Santa Monica and the northerly portion of the adjacent territory in the city of Venice.

The water company supplies water for domestic and municipal purposes, and to a slight extent for irrigation. The water company reports in its annual report for the year ending December 31, 1914, that it has 1,062 connections for private consumers and 34 connections for municipal purposes, and that it has 70 meters installed.

At the hearing the city filed an amended inventory and also additions to the amended inventory, which amended inventory and additions thereto were substituted for Exhibit "B" attached to the petition herein. It was also stipulated that any additional property which might be discovered during the hearing might be added to the property described by the city, it being understood that it is the purpose of the city to acquire and of the water company to dispose of the entire property of the water company in Santa Monica and in Venice, except the water company's corporate franchise. Attached hereto and marked "Exhibit No. 1," is a list of the entire property of the water company, in so far as I have been able to determine the same from the evidence herein.

E. J. Vawter, Jr., president of the water company, testified that, in his opinion, the fair value of all the property as a going concern is $115,000.00. This is the value claimed for the property in the water company's brief herein. The city of Santa Monica in its brief claims that the total value is $52,591.30.

I shall discuss the various elements of value herein under the following heads:

1. Lands.
2. Physical structures and improvements.
3. Water rights.
4. Going value.

1. Lands.

The city accepted the land values testified to by Mr. Vawter as follows:

Lots 17 and 18, block "C," Vawter's Marine street tract	$1,987 50
Lots 23 and 24, block "C," Howard subdivision	3,600 00
Lots 10 and 11, block "A," tract 2352	2,634 00
Rights of way—7 parcels	700 00
Total	$8,921 50

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These values do not include an allowance for developed water nor do they include the water rights detached from land hereinafter referred to.

I desire to draw attention, in this connection, to the fact that the entire Rose street property, consisting of two lots and the well located thereon, were leased by Santa Monica Commercial Company to Ocean Park Water Company on July 1, 1913, with an option to purchase for $3,000.00, and that on April 23, 1915, during the hearings herein, this property was conveyed by Santa Monica Commercial Company to Ocean Park Water Company for the consideration of $3,000.00. The stockholders in the water company and Santa Monica Commercial Company are largely the same, and the water company claims that this was largely a family transaction. When it is remembered, however, as will hereinafter be pointed out, that the water company has as yet acquired no right, as against protesting land owners owning lands over the water bearing strata, to take water from this property and convey it off the water bearing strata for sale to the public, I am not at all certain that the price agreed to be paid does not fairly represent the value of the property at the time the option was given.

2. Physical Structures and Improvements.

Mr. C. S. Burns, appearing for the water company, presented as water company's Exhibit No. 1, an estimate of reproduction cost new, and depreciated reproduction cost of the water company's properties in Santa Monica and he also presented as water company's Exhibit No. 2 an estimate of reproduction cost and of depreciated reproduction cost of the company's properties in Venice. The estimates of physical properties and structures contained in these exhibits are as follows:

	Estimated reproduction cost	Estimated depreciated reproduction cost
Santa Monica	$62,592 09	$55,063 22
Venice	14,774 87	13,301 74
Totals	$77,366 96	$68,364 96

Mr. C. S. Mellen, the water company's general manager, thereafter presented an estimate of the value of the property showing a value somewhat less than that presented by Mr. Burns. As Mr. Mellen's estimate is based largely on quantities and prices supplied by other people and does not represent his own independent judgment, it will not be necessary to refer to this estimate.

Mr. James Armstrong, one of the Railroad Commission's assistant hydraulic engineers, presented an estimate of the cost to reproduce the

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physical structures and improvements, together with the estimated depreciated reproduction cost, as follows:

	Estimated reproduction cost	Estimated depreciated reproduction cost
Santa Monica	$43,227 00	$34,714 00
Venice	9,797 00	8,685 00
Totals	$53,024 00	$43,399 00

The inventories used by these engineers were not complete. The following items should be added to the property listed in Mr. Armstrong's inventory:

(*a*) *In Santa Monica*: 1 manhole, a compensator, concrete foundation for pump and motor, bronze pump runners, 3 fire hydrants and large valves.

The estimated reproduction cost of these items is $1,062.00 and their estimated depreciated reproduction cost is $813.00.

(*b*) *In Venice*: Switchboard and wiring, pump and motor foundations, 4 fire hydrants, wire-wound screen well pipe and large valves.

The total estimated reproduction cost of these items is $359.00 and their estimated depreciated reproduction cost $313.00.

Mr. Armstrong's revised estimates are accordingly as follows:

	Estimated reproduction cost	Estimated depreciated reproduction cost
Santa Monica	$44,289 00	$35,527 00
Venice	10,156 00	8,998 00
Totals	$54,445 00	$44,525 00

The chief item of difference between Mr. Burns and Mr. Armstrong lies in the paving cost. Mr. Burns has included an allowance for all the paving which now lies over the mains and pipes of the water company, even though it was laid subsequent to the laying of the mains and services, without any expense to the water company. Mr. Armstrong has allowed paving only where it was actually cut through by the water company, in accordance with this Commission's decision in Application No. 1141, *In the Matter of the Application of Marin Municipal Water District for an order fixing and determining the just compensation to be paid to Marin Water and Power Company for its lands, property and rights,* decided April 9, 1915. Mr. Burns also includes an allowance of $2,000.00 for preliminary expenses, which allowance Mr. Armstrong undertook to cover in his overhead percentages; also an

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allowance of 5 per cent for special fittings on pipes, whereas Mr. Armstrong included an allowance for this item in his unit costs for pipe, which costs the water company accepted; also, Mr. Burns estimated depreciation on the sinking fund basis, while Mr. Armstrong estimated it on the straight line basis.

3. Water Rights.

As already stated, Ocean Park Water Company secures its water from its Highland avenue well, in Santa Monica, and its Rose avenue well, in Venice. The water company claims that the Highland avenue plant has a capacity of 54 miner's inches and the Rose avenue plant a capacity of 40 miner's inches. There was no direct testimony as to the amount of water actually used by its consumers, except the general statement that the maximum use during the summer time from the system was about one million gallons per day. This would be the equivalent of 77.1 miner's inches. Attention should be drawn in this connection to the fact that no water was used by the water company from the Rose avenue plant prior to July, 1913, and that prior thereto the water from this plant was used entirely on the land on which it was located, for the purpose of irrigation. It follows that, assuming for the sake of the argument that the prescriptive right to the use of water might be secured from the Rose avenue well; no such right has been secured. In the period during which the Rose avenue well was used for the purpose of irrigation on the land on which it was located, no prescriptive right could arise, for the reason that the owner was simply using percolating water, in accordance with the rights of each land owner over the water bearing strata and that no use adverse to any one could thus arise. (*Katz* vs. *Walkinshaw,* 141 Cal. 116.) While a right as against others to continue to take water from the Rose avenue well for conveyance elsewhere and sale to the public may ultimately arise, it is clear that no such right has as yet ripened.

The water company owns and the city desires to acquire the rights to all water, whether it be percolating or in defined streams or otherwise, under blocks "A," "B" and "C" of the Vawter Marine street tract, reserved to the water company in deed to Santa Monica Commercial Company, dated April 5, 1906, together with certain other rights specified in said deed. The water company also owns and the city desires to acquire all the water in and under Tract No. 2352, in the city of Venice, conveyed to the water company by Santa Monica Commercial Company by quitclaim deed dated February 10, 1915.

Santa Monica Commercial Company by the same deed conveyed to Ocean Park Water Company all water in and to all other lands theretofore conveyed to any person or persons by Santa Monica Commercial Company by deeds in which reservations were made of water or water

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rights. The testimony shows that several hundred lots are affected by this provision and that the water company will give a good and sufficient deed conveying water rights in all these lots, although they are not particularly described in the record.

Some value must be allowed in these proceedings for these rights, but what that value shall be is difficult to determine. Mr. C. S. Mellen, the water company's general manager, testified that, in his opinion, the rights reserved in the 20 acres constituting Vawter's Marine street tract, in Santa Monica, and Tract No. 2352, in Venice, are worth $20,000.00, being $1,000.00 for the rights reserved in connection with each acre. When it is remembered that the City Water Company of Ocean Park paid $1,000.00 per acre for the fee, including all water and water rights, for the land on which its "Dandy" well is located, it would seem that Mr. Mellen's estimate is extremely optimistic. The testimony shows nothing with reference to the water bearing character of these lands, except that one attempt has been made by the water company to drill a well in this property and that this attempt was a failure.

The facts surrounding the production of water in and about Santa Monica and the question of the value of the right to pump and divert water in connection therewith, in so far as necessary for these cases, have been fully discussed in the opinion this day being rendered in Application No. 1562, being the application of the city of Santa Monica for an order fixing and determining the just compensation to be paid to Irwin Heights Water Company. It would be surplusage to repeat this discussion here. Reference is hereby made to the opinion in Application No. 1562.

4. Going Value.

The water company claims an allowance of $15,202.00 for going value, from which should be deducted an indeterminate amount for interest during construction. This sum is claimed to represent the difference between the value to a purchaser of the plant as it now stands and the cost of building up a plant to serve the same territory and of building up the business. The estimate assumes a construction period of two years, whereas one year is undoubtedly sufficient. The estimate must be reduced in this amount.

The water company also presents, as Exhibit "C" attached to the answer, a statement of property heretofore used in the development of the business but now lost, excepting the salvage value, the total amount lost being claimed to be $7,498.00. This statement is presented as illustrative of expenses incurred in building up the business. With the contention that an investor will always be willing to pay a bonus for an established business we can not agree. If the established business is being conducted at a loss or at but a very slight profit, the investor will

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be likely either to discount the value of the physical property or to go elsewhere and invest his money where he can receive the usual rate of return. It is not an answer to say that he will buy the property and pay a higher value for it on the chance that he can persuade the public authorities to increase the rates. It may well be that there are good reasons why the rates can not be increased, as, for instance, that the property is overbuilt or that the rates being collected are already as high as the consumer can reasonably be called upon to pay. Hence, it becomes necessary, when claims are made for going value, to analyze the finances of the utility to see whether such claim finds support in the facts as they actually exist.

The annual report of the water company for the year ending December 31, 1913, shows an operating revenue of $17,710.79, with operating expenses amounting to $17,326.38, thus showing a net revenue available for the payment of interest amounting to only $384.41. The sum of $17,326.38 reported as operating expenses includes $2,851.99 for depreciation. The annual report for the year ending December 31, 1914, shows an operating revenue of $18,521.29, and operating expenses amounting to $17,831.34, thus showing a net operating revenue of $689.95. The operating expenses thus reported include $2,981.81 for depreciation. The company reports that it received $720.00 for the rent of its reservoir, thus making a total gross corporate income of $1,409.95 to meet a payment of $3,040.04 for interest on the bonds and certain additional interest. The water company has bonds of the face value of $50,000.00 outstanding, bearing interest at the rate of 6 per cent per annum. The company thus reports a deficit, after making allowance for the interest, of $1,630.09. Whether these computations are all entirely correct, it is not necessary here to determine. Suffice it to say that the water company claims that it is operating under a material deficit and has asked the Railroad Commission to increase its rates. The rates now charged are the same as those which were established by General Ordinance No. 48 of the city of Santa Monica for the year 1908 to 1909. Although the force of that ordinance was spent, under the provisions of section 1 of article XIV of the constitution, at the termination of one year, the water company has nevertheless continued to charge the same rates and there is no record of any attempt to increase the rates. These are all matters to which careful consideration must be given in determining the value of the property as a going concern.

The tangible items of this property are the physical structures and improvements, estimated by Mr. Burns, including paving which the company did not lay, to have a depreciated reproduction value of $68,364.96, and by Mr. Armstrong to have a depreciated reproduction value of $44,525.00, and the lands, having an agreed value of $8,921.50.

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This property is being taken in its entirety as a going concern, and it is not possible to segregate the different elements which enter into the value and to assign to each element a particular value. If we may assume a depreciated reproduction value of $50,000.00 for the physical structures and improvements, as part of the going concern, and add thereto an allowance of $8,921.50 for the lands as part of the going concern, we would have a total of $58,921.00 as the entire value of the tangible property.

I refer to this matter for the reason that I was much impressed by the evidence of the president of the water company and by his estimate of tangible values, but find myself unable, after a careful consideration, to find a value for the entire property approximating the value testified to by him. When consideration is given to the effect which the establishment of the value claimed by him would have on the rates which have been in effect for a long time under this system, and to the necessity for improvements in this system as directed in Case No. 703, *Shelly* vs. *Ocean Park Water Company*, by decision this day being rendered, I am hopeful that the water company's officers will agree, on reflection, that the value of the property is considerably less than the amount which has heretofore seemed to them fair and equitable.

I recommend the following findings:

FINDINGS.

City of Santa Monica, an incorporated city, having filed with the Railroad Commission a petition setting forth the intention of the city to acquire under eminent domain proceedings the lands, property and rights of Ocean Park Water Company, a public utility, and asking the Railroad Commission to fix and determine the just compensation to be paid to Ocean Park Water Company for the public utility and the lands, property and rights thereof, and public hearings having been held, and the Commissioner who heard the evidence having made a personal inspection of the wells, pumping plants, reservoir and a portion of the distributing system of said Ocean Park Water Company, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by the city of Santa Monica to Ocean Park Water Company for all of said company's lands, property and rights, other than the right to be a corporation, as said lands, property and rights are described in Exhibit No. 1, which is attached hereto and made a part hereof, is the sum of seventy-seven thousand five hundred dollars ($77,500.00).

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

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EXHIBIT No. 1.

All the lands, property and rights of Ocean Park Water Company, other than the right to be a corporation, more specifically described as follows:

Lands.

Parcel No. 1.

Lots 17 and 18, block "C" of the Vawter Marine street tract, city of Santa Monica, as per map recorded in book 9, page 144 of Map Records of Los Angeles County, California.

Parcel No. 2.

Lots 23 and 24, block "C" of F. P. Howard's subdivision of blocks 24 and 25 of the Lucas tract, South Santa Monica, as per map recorded in book 10, page 9, Miscellaneous Records of Los Angeles County, California.

Parcel No. 3.

Lots 10 and 11, in block "A" of tract No. 2352, Venice, as per map recorded in book 22, at page 124 of Map Records of Los Angeles County, California.

Parcel No. 4.

The right to construct, own and maintain water mains in and along the westerly portion of the Arcadia tract, in the city of Santa Monica, the same to be as near as may be to the westerly line of said tract and not less than 18 inches underground and surface left smooth, with the right to repair and construct the same, granted to Ocean Park Water Company by W. G. Cochran, Anna M. Cochran, Benito Guerra, Lucy Guerra, Alberta I. Bradt and Lewis E. Bradt by deed dated September 29, 1906, and recorded on October 1, 1906, in book 2803 of deeds, at page 141, Records of Los Angeles County, California.

Parcel No. 5.

The right to lay a line of water pipe across lots 2 and 5, in block "M" of the Santa Fe tract, in the town of Santa Monica, between Ballona avenue and Cherry street, as per map recorded in book 18, page 17, Miscellaneous Records of Los Angeles County, granted to Ocean Park Water Company by Santa Monica Commercial Company by deed dated September 8, 1904, and recorded on September 19, 1904, in book 2088 of deeds, at page 220, Records of Los Angeles County, California.

Parcel No. 6.

The right to construct, own and maintain water mains in and along the westerly portion of Arcadia tract, in the city of Santa Monica, the same to be as near as may be to the westerly line of said tract, with the right to repair and construct the same, granted to Ocean Park Water Company by N. M. Fillmore and Mrs. Anna Fillmore, by deed dated October 10, 1906, and recorded on October 16, 1906, in book 2818 of deeds, at page 156, Records of Los Angeles County, California.

Parcel No. 7.

The right to construct, own and maintain water mains in and along the westerly portion of the Arcadia tract, in the city of Santa Monica, the same to be as near as may be to the westerly line of said tract, with the right to repair and construct the same, granted to Ocean Park Water Company by John C. Ince and Minnie F. Ince by deed dated January 17, 1907, and recorded on January 23, 1907, in book 2906 of deeds, at page 234, Records of Los Angeles County, California.

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Physical Structures and Improvements.

Item	Quantity	Unit
Property located in Venice.		
Rose avenue pumping plant—		
3½" B.J. 2-stage vertical comp. with 35 H.P. motor, complete	1	Lot
39" reinforced concrete well shaft, with 2-40'-12" No. 12 well	1	Lot
6" sand trap	1	Lot
Frame buildings	1	Lot
Pipe lines—		
2" S.S. black pipe	16,264	Foot
4" S.S. black pipe	354	Foot
4" O.D. casing	4,032	Foot
6" O.D. casing	1,686	Foot
Meters—		
¾" meters	16	Each
1" meters	1	Each
3" meters	1	Each
Services—		
½" galvanized services	158	Each
¾" galvanized services	75	Each
1" black services	1	Each
2" black services	1	Each
4" black services	1	Each
Fire hydrants and flush tank	1	Lot

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Item	Quantity	Unit
Property located in Santa Monica.		
Highland avenue plant—		
40 H.P. motor, complete	1	Each
4″ B.J. 2-stage vertical centrifugal pump on 36′ steel frame	1	Each
Pipe and fittings for above	1	Lot
56′ of 2-ply leather belting	1	Each
Brick and concrete well pit	1	Each
12″ No. 12 cased wells, each 39′ deep	4	Each
Frame buildings	1	Lot
Concrete reservoir (reinforced)—		
Concrete and excavation for reservoir, steps and retaining walls	1	Lot
Roof (lumber, screening, etc.)	1	Lot
Pipe and fittings	1	Lot
Electric alarm system	1	Lot
Overflow	1	Lot
Pipe lines—		
1″ S.S. pipe, black	1,076	Foot
2″ S.S. pipe, black	26,069	Foot
6″ S.S. pipe, black	20	Foot
4″ O.D. casing	17,557	Foot
6″ O.D. casing	1,847	Foot
8″ O.D. casing	804	Foot
10″ O.D. casing	3,150	Foot
6″ No. 14 R.S.	530	Foot
Meters—		
⅝″ meters	32	Each
¾″ meters	11	Each
1″ meter	1	Each
2″ meters	3	Each
Services—		
½″ galvanized service	576	Each
¾″ galvanized service	169	Each
1″ galvanized service	4	Each
2″ galvanized service	6	Each
Hydrants—		
2″, not standard	1	Lot
Manholes, 11 in all, 3′ to 7′ deep	1	Lot
Office equipment, maps, plats, books, and other records.		
Horse, wagon and harness.		
Tools.		
Meters, pipes and fittings, in stock.		

All water rights owned by Ocean Park Water Company, including:

1. All water and water rights developed and being developed at Highland avenue wells and Rose avenue wells.

2. All water, whether it be percolating or in defined streams or otherwise, in or under blocks A, B and C of the Vawter Marine street tract, as per map recorded in book 9, page 144, of Map Records of Los Angeles County, California, together with the exclusive right to lay and maintain all water pipes in said lots and to supply all water used thereon, reserved by Ocean Park Water Company in deed to Santa Monica Commercial Company, dated April 5, 1906, and recorded on May 1, 1906, in book 2671 of deeds, at page 70, Records of Los Angeles County, California.

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3. All water in and under that tract of land particularly described as tract No. 2352, in the city of Venice, county of Los Angeles, State of California, as per map recorded in book 22, page 124, of maps, whether said water be percolating or in defined streams or otherwise, also all such water in or under any lands which have heretofore been conveyed by Santa Monica Commercial Company to any person, persons or corporations in which reservations have been made of such water or water rights and situate in the city of Santa Monica and the city of Venice, together with the right to extract said water and to sell or use any water for any purpose whatsoever, together with all reservations heretofore made and all reservations that may be hereafter made concerning water in deeds and contracts wherein Santa Monica Commercial Company has reserved or may hereafter reserve the exclusive right to lay and maintain all water pipes upon any land, and to supply all water used thereon, all as provided in quitclaim deed dated February 10, 1915, from Santa Monica Commercial Company to Ocean Park Water Company, recorded on February 23, 1915, in book 5968 of deeds, at page 338, Records of Los Angeles County, California.

DECISION No. 2550.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS, AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided June 30, 1915.

Western States Gas and Electric Company, estimating its necessary capital expenditures for the year ending May 1, 1916, at $257,000.00, applies for permission to issue $266,000.00 face value of bonds and $33,000.00 face value of 6 per cent three-year notes for such purposes, and after review of its present financial condition, application granted, bonds to be sold at not less than 85 and notes at not less than 93.

Allen Chickering, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Western States Gas and Electric Company for authority to issue and sell at not less than 85 per cent and accrued interest $266,000.00 face value of first and refunding mortgage 5 per cent gold bonds due June 1, 1941. Applicant also seeks authority to issue and sell at not less than 93 per cent and accrued interest $33,000.00 face value of three-year 6 per cent gold notes due October 1, 1917.

In Exhibit No. 5, attached to this application, applicant estimates that its construction expenses for the year ending May 1, 1916, will

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aggregate $257,000.00. It proposes to expend for construction, additions and betterments to its plant the following:

Stockton Division—		
Gas Department:		
Plant	$2,500	
Distribution	40,000	
Miscellaneous	2,500	
Total Gas Department		$45,000 00
Electric Department:		
Plant	$80,000	
Transmission	10,000	
Distribution	85,000	
Miscellaneous	5,000	
Total Electric Department		180,000 00
Richmond Division		20,000 00
Eureka Division		12,000 00
Total		$257,000 00

Western States Gas and Electric Company has an authorized bond issue of $10,000,000.00. The bonds bear 5 per cent interest, payable semiannually on December 1st and June 1st. The bonds are dated June 1, 1911, and mature June 1, 1941. By the terms of the deed of trust executed to Girard Trust Company, of Philadelphia, trustee, $825,000.00 face value, of first and refunding bonds shall be certified by the trustee immediately upon the execution of the deed of trust; $2,575,000.00 face value of first and refunding bonds are appropriated to redeem, retire or refund the following underlying bonds:

(*a*) Six hundred thirty-nine thousand dollars, face value, of bonds of Humboldt Gas and Electric Company;

(*b*) Nine hundred seventy-two thousand dollars face value, of bonds of American River Electric Company;

(*c*) Seven hundred fifty thousand dollars face value, of bonds of Stockton Gas and Electric Corporation;

(*d*) Two hundred fourteen thousand dollars face value, of bonds of Eureka Lighting Company.

All of the underlying bonds, except $452,000.00 face value, of bonds of American River Electric Company, have been redeemed or refunded.

The sum of $6,600,000.00 face value, of first and refunding bonds of Western States Gas and Electric Company are appropriated to pay 75 per cent of the reasonable cost to the company of any new or additional properties purchased or acquired, or of any permanent extensions, additions, betterments or improvements made to its plant subsequent to June 1, 1911. However, none of the last mentioned "bonds shall

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be certified or delivered until and unless the earnings of the company from the operation of its plants and properties and from income upon any securities owned by the company, for the period of twelve consecutive months, ending not more than sixty days prior to the date of the respective applications for certifications, after deducting from such earnings all operating expenses, including taxes, insurance premiums and customary expenses for current repairs and current maintenance ordinarily chargeable to operating expenses, shall have been in each case equal to at least twice the interest charges on all the underlying bonds herein referred to and then outstanding, on all of the bonds hereby secured and then outstanding, and on all of the bonds whose certification and delivery is then applied for."

Applicant reports that it has expended from June 1, 1911, to April 30, 1915, for the acquisition of property and for the construction of additions and betterments to its plant the sum of $2,326,720.14. By the terms of the deed of trust, as hereinbefore outlined, it will be permitted to issue bonds in the sum of $1,745,040.10. Applicant's reports show that it has issued bonds in the sum of $1,671,000.00 face value, to secure funds to finance its construction work subsequent to June 1, 1911. Applicant under its deed of trust may issue additional bonds in the sum of $74,040.10. As heretofore stated, applicant, however, asks for authority to issue and sell $226,000.00 face value, of its first and refunding bonds to finance its construction expenditures for the year ending May 1, 1916, which are estimated in the sum of $257,000.00. Seventy-five per cent of such estimate amounts to $192,750.00.

To pay for the 25 per cent of the cost of extensions, additions and betterments for which no bonds may be issued, applicant proposes to sell $33,000.00 face value of its 6 per cent notes due October 1, 1917.

In Exhibit No. 2, attached to this application, applicant reports earnings and expenses for the year ending April 30, 1915, as follows:

Operating revenues		$1,148,435 93
Operating expenses		597,204 90
Net operating revenue		$551,231 03
Deductions—		
Interest on funded debt	$249,231 09	
Other interest	27,330 93	
Depreciation and amortization of debt discount	64,739 16	
Dividends on preferred stock	148,750 00	
Total deductions		490,051 18
Surplus for the year		$61,179 85

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The balance sheet of Western States Gas and Electric Company as of December 31, 1914, filed with this Commission shows the following assets and liabilities:

Assets.

Plant and franchise	$7,964,974 52
Fixed capital	2,253,454 33
Bonds in treasury	10,000 00
Three-year coupon notes in treasury	451,000 00
Cash and deposits	45,903 40
Notes receivable	17,417 56
Accounts receivable	120,550 02
Investments	83,884 84
Materials and supplies	49,293 19
Sinking funds	47,111 49
Other special funds	88,000 00
Prepaid expenses	1,665 15
Bond discount	559,957 31
Other suspense	58,775 20
Leased signs and motors	13,046 61
Total assets	$11,765,033 62

Liabilities.

Stock	$5,356,500 00
Bonds outstanding	4,845,000 00
Three-year coupon notes outstanding	731,000 00
Notes payable	314,100 00
Accounts payable	114,905 01
Interest accrued	23,169 38
Taxes accrued	33,419 77
Dividends declared	98,067 50
Reserve for accrued depreciation	120,000 00
Reserve for bad debts	1,562 86
Surplus	127,309 10
Total liabilities	$11,765,033 62

Applicant reports that it has sold all the bonds and notes, the sale of which has been heretofore authorized by this Commission.

I herewith submit the following form of order:

ORDER.

Western States Gas and Electric Company having applied for authority to issue $266,000.00 face value of its 5 per cent thirty-year first and refunding bonds at not less than 85 per cent of the face value plus accrued interest, and to issue $33,000.00 face value of its three-year 6 per cent notes due October 1, 1917, at not less than 93 per cent of the face value plus accrued interest;

And a hearing having been held and it appearing that the purposes for which applicant proposes to issue the bonds and notes are not in whole or in part chargeable to operating expenses or to income,

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It is hereby ordered that Western States Gas and Electric Company be given authority, and hereby is given authority, to issue and sell $266,000.00 face value, of its thirty-year 5 per cent first and refunding bonds.

It is hereby further ordered that Western States Gas and Electric Company be given, and is hereby given, authority to issue and sell $33,000.00 face value of its three-year 6 per cent notes due October 1, 1917.

The authority herein given is given upon the following conditions and not otherwise:

(1) Applicant shall sell the bonds herein authorized to be issued at a price not less than 85 per cent of the face value plus accrued interest.

(2) Applicant shall sell the notes herein authorized to be issued at a price not less than 93 per cent of the face value plus accrued interest.

(3) The proceeds obtained from the sale of the bonds and notes shall be used by the applicant to pay for the cost of extensions, additions and betterments to its plant in accordance with a summary (marked Exhibit No. 5) of said list of extensions, additions and betterments, estimated to cost as follows:

Stockton Division	$225,000 00
Richmond Division	20,000 00
Eureka Division	12,000 00
	$257,000 00

(4) Before applicant shall expend any of the proceeds obtained from the sale of its bonds and notes herein authorized, it shall file with this Commission a detailed statement of such extensions, additions and betterments, and such statement shall receive the approval of this Commission.

(5) The proceeds obtained from the sale of the bonds shall be deposited with the trustee, and delivered to the company as the work for the extensions, additions and betterments progresses.

(6) Western States Gas and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds and notes hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds and notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(7) The authority herein given shall apply to such bonds and notes as shall have been issued and sold on or before June 30, 1916.

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(8) The authority herein given is conditioned upon the payment of the fee prescribed under the Public Utilities Act as amended.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

DECISION No. 2551.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AUTHORITY TO ISSUE THREE-YEAR SIX PER CENT NOTES; AND

Application No. 1303.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF ONE HUNDRED AND ONE THOUSAND DOLLARS.

Application No. 1450.

Decided June 30, 1915.

Allen Chickering, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

THIRD SUPPLEMENTAL ORDER.

Whereas, this Commission by Decision No. 1843, dated October 6, 1914, authorized Western States Gas and Electric Company to expend for additions and betterments to be made during the last six months of 1914, the sum of $135,000.00 to be obtained from the sale of its three-year 6 per cent notes; and

Whereas, applicant during said time has only expended for said purposes the sum of $71,735.67, leaving a balance of $63,264.33 on hand; and

Whereas, applicant reports that it has expended during the first four months of the year 1915 for construction, betterments and additions to its plant the sum of $74,355.73; and

Whereas, applicant asks for authority to use the balance—$63,264.33—to reimburse its treasury in like amount for the cost of expenditures during the first four months of the year 1915, for construction, betterments and additions to its plant; and

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Whereas, it appears that such expenditures are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Western States Gas and Electric Company be, and it is hereby, given authority to use the $63,264.33, heretofore authorized to be expended for construction, betterments and additions to its plant during the last six months of 1914, to reimburse its treasury in the amount of $63,264.33 for the cost of construction, betterments and additions to its plant during the first four months of 1915;

It is hereby further ordered that the authority herein given shall apply to such reimbursement as may be effected on or before October 1, 1915;

It is hereby further ordered that the order in Decision No. 1843, dated October 6, 1914, and its amendments, shall remain in full force and effect except as it may be in conflict with this third supplemental order.

The foregoing third supplemental order in these proceedings is hereby approved and ordered filed as the third supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

DECISION No. 2552.

IN THE MATTER OF THE APPLICATION OF APPLETON LAND, WATER AND POWER COMPANY TO SELL PARTS OF ITS WATER RIGHTS AND SYSTEM TO THE HESPERIA WATER COMPANY.

Application No. 1693.

IN THE MATTER OF THE APPLICATION OF HESPERIA WATER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE EXERCISE OF RIGHTS TO FURNISH WATER TO THE INHABITANTS AND LAND OWNERS IN AND ABOUT HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA, AND FOR THE RIGHT TO PURCHASE CERTAIN WATER RIGHTS AND PLANT AND TO PAY THEREFOR BY THE ISSUANCE OF PAID UP STOCK, NOTES AND MORTGAGES OF THE COMPANY.

Application No. 1694.

Decided June 30, 1915.

Appleton Land, Water and Power Company authorized to lease to the Hesperia Water Company its water distributing system in and adjacent to the town of Hesperia, and the latter named company granted a certificate of public convenience and necessity authorizing the exercise of franchise rights under a franchise granted by the county of San Bernardino, provided that the water company shall claim no value for such franchise over and above its actual cost.

Anderson & Anderson, by *W. H. Anderson,* for Applicants.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this opinion are combined for decision the amended applications of The Appleton Land, Water and Power Company for authority to lease certain water utility properties in San Bernardino County to Hesperia Water Company, and of the latter company to acquire said property and operate the same under certificate of public convenience and necessity issued by this Commission.

These applications originally involved the transfer of the properties and the issue of securities in payment therefor, but owing to objections made by the owner of a mortgage upon the properties of The Appleton Land, Water and Power Company, these matters have been withdrawn from consideration.

The proposed schedule of rates, rules and regulations filed by Hesperia Water Company, with the original application has also been withdrawn.

The Appleton Land, Water and Power Company was incorporated October 31, 1911, under the laws of the State of California. It is the owner of approximately 30,000 acres of land in San Bernardino County, including the greater part of the townsite of Hesperia, on which is located the unincorporated town of Hesperia, having a population of approximately fifty inhabitants.

It is the Appleton company's intention to so reorganize its affairs that the public utility water systems which it owns may be separated from its other business. To this end it has caused to be incorporated the Hesperia Water Company, having an authorized stock issue of 400 shares of stock of the par value of $100.00 each. None of this stock is outstanding at the present time.

The water system now serving the town of Hesperia is a part of the larger system of The Appleton Land, Water and Power Company, which has its origin at certain diversion works located on the east fork of the Mojave River, known as Deep Creek. From these diversion works the water is piped to a reservoir located near the town of Hesperia, from whence it is piped to the town and adjoining lands.

In this proceeding the Commission is asked to approve a five-year lease from The Appleton Land, Water and Power Company to Hesperia Water Company of the pipe lines, distributing system and rights of way necessary to serve Hesperia townsite. The proposed lease also contains an agreement on the part of the Appleton company to furnish the Hesperia company with sufficient water to serve its consumers.

The lessor reserves the right to use this distributing system for the purpose of conducting water to lands other than those included within the townsite, provided that such use does not interfere with the operations of Hesperia Water Company.

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As consideration for the lease, Hesperia Water Company agrees to pay The Appleton Land, Water and Power Company an amount equal to the net income of the properties. The lease is terminable upon ninety days' notice, this provision having been inserted in order to expedite the transfer of the properties in case the consent of the mortgagee to a sale can be secured.

The pipe lines now serving the Hesperia townsite have been in existence for nearly thirty years and are badly depreciated. A valuation of the system made by the Commission's engineers and introduced at the hearing was as follows:

Estimated cost, new	$6,108 00
Annual depreciation	177 00
Present value	910 00

Hesperia Water Company is the possessor of a franchise granted by the county of San Bernardino for the distribution of water in the Hesperia townsite. This franchise is for a period of fifty years and is dated May 17, 1915.

At the hearing it developed that The Appleton Land, Water and Power Company had been serving certain consumers lying outside the limits described in the Hesperia Water Company's franchise and articles of incorporation. It was therefore stipulated that either the Appleton company would continue to serve these consumers with water or else that Hesperia Water Company would secure a new franchise and amend its articles of incorporation accordingly.

After a consideration of the evidence, I am of the opinion that this application should be granted, and I accordingly submit the following form of order:

ORDER.

The Appleton Land, Water and Power Company having applied to this Commission for authority to lease certain rights and property to Hesperia Water Company, and Hesperia Water Company having applied for a certificate of public convenience and necessity and the right to issue certain shares of stock, as hereinbefore set forth, and it appearing to this Commission that applicants' requests are reasonable and should be granted,

It is hereby ordered that The Appleton Land, Water and Power Company be, and it is hereby, authorized to execute a lease to Hesperia Water Company substantially of the form set forth in Exhibit "A," attached to this decision;

It is further ordered that Hesperia Water Company be, and it is hereby, granted a certificate of public convenience and necessity to operate a water utility system in San Bernardino County, according to the terms of a franchise granted by said county on May 17, 1915.

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This certificate of public convenience and necessity shall not become effective until Hesperia Water Company shall have filed a stipulation with this Commission and shall have received the approval of the Commission thereto by supplemental order, said stipulation to recite that Hesperia Water Company does not, and never shall, claim in any proceeding before this Commission, or any other public body, a value for the franchise granted to Hesperia Water Company by Ordinance No. 164 of the county of San Bernardino, in excess of the actual cost to Hesperia Water Company of acquiring said franchise.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Before the lease herein authorized shall be finally executed, applicants shall present to this Commission satisfactory evidence that all of the consumers now served by The Appleton Land, Water and Power Company will continue to be served in the future either by Hesperia Water Company or The Appleton Land, Water and Power Company, and applicants shall secure from this Commission a supplemental order approving the same.

2. The terms of the lease herein authorized to be executed shall not hereafter be binding upon this Commission or any other public body as representing for rate fixing or other purposes the real value of the leased property.

3. The authority herein granted shall apply only to such lease of property and such issue of stock as shall have taken place on or before June 1, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

EXHIBIT "A"

THIS INDENTURE, Made and entered into this _____ day of May, 1915, by and between the Appleton Land, Water and Power Company, a corporation, lessor, and the Hesperia Water Company, a corporation, lessee;

Witnesseth, That in consideration of the sum of $1.00 and other valuable considerations to the lessor paid by the lessee, the lessor, in pursuance of resolution duly adopted by its board of directors on the 6th day of May, 1915, does hereby lease, demise and let unto the lessee for and during the term of five years, commencing May 1, 1915, and ending April 30, 1920, the following described real and personal property, to wit:

The right to receive and furnish for use for domestic and irrigation purposes sufficient water to supply the users in the territory known as Hesperia, in which the lessee is incorporated to serve, to be received from the reservoir of the lessor located south of the town of Hesperia in San Bernardino County, State of California, and to be furnished and distributed to the water users and land owners within the district particularly described in the articles of incorporation of the lessee in San Bernardino County, State of California, including the town of Hesperia; also all pipe lines and rights of way for pipe lines owned by the lessor within the said

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boundaries of the said district, and right of way for conduct of such water from the Hesperia reservoir through the pipe line of the lessor leading from said reservoir to said distributing system, for the purpose of distributing said water, or so much thereof as may be required, to the said inhabitants and land owners of the said town of Hesperia within the boundaries of said district, reserving to the lessor the right to also use the said water distributing system for purposes of conducting water through the same to lands other than those included within such district, but not so as to interfere with the distribution of water within said district.

And as consideration and rental for such lease the said lessee agrees to pay the lessor each year an amount equal to the net income derived from the distribution of said water and the use of said leased properties, such rental to be paid in quarterly installments upon adjustments and settlements to be made on the first of each quarter of said term; provided, however, the lessor reserves hereby the right at any time upon ninety days' notice to cancel this lease; and the lessee agrees that it will not assign this lease nor make a sub-lease of the said properties without the consent in writing of the lessor, and that on the expiration of this lease, or the sooner determination of said term, it will peacefully quit and surrender all the property above leased and described to the lessor, its successors or assigns, in as good condition as when received by it, ordinary wear and tear and injury by the elements excepted.

It is agreed that costs of repair of said system shall be incurred by the lessee, but the cost thereof shall be deducted from the income derived from the distribution of such water, provided, however, that any extensions of mains or pipe lines shall be at the cost of the lessor, and the same when made within such district shall be considered covered by this lease.

This lease is subject to approval by the Railroad Commission of the State of California.

DECISION No. 2553.

IN THE MATTER OF THE APPLICATION OF TOWN OF EMERYVILLE, BAY CITIES HOME TELEPHONE COMPANY AND THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER AND ASSIGNMENT OF A FRANCHISE AND FOR A CERTIFICATE THAT THE PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE THEREOF.

Application No. 1724.

Decided June 30, 1915.

Bay Cities Home Telephone Company authorized to transfer its franchise authorizing the construction and operation of a telephone system in the town of Emeryville to The Pacific Telephone and Telegraph Company, provided that no value shall ever be claimed for such franchise other than the actual cost of acquisition.

Pillsbury, Madison & Sutro, by *H. D. Pillsbury,* for The Pacific Telephone and Telegraph Company.

William Thomas, by *Alden Ames,* for Bay Cities Home Telephone Company.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Bay Cities Home Telephone Company for authority to assign a certain franchise to The Pacific Telephone and Telegraph Company and of the latter company for a certificate that public convenience and necessity require the exercise by said company of the rights granted by said franchise. The town of Emeryville joins in the application.

The franchise referred to was granted by the town of Emeryville to Home Telephone Company of Alameda County, on the 25th day of March, 1907, by Ordinance No. 76, and was later assigned by the grantee to Bay Cities Home Telephone Company, one of the applicants herein. A copy of said ordinance is attached to the petition herein, and marked Exhibit "A," and reference is hereby made thereto.

Ordinance No. 76 grants to Home Telephone Company of Alameda County, its successors and assigns, the right to use the public streets of Emeryville for the construction and operation of a telephone system. Among other provisions are the following:

> 1. The telephone company agrees to furnish two free telephones for the use of the city.
>
> 2. The telephone company agrees to pay to the city after five years, as provided by the Broughton Act, two per cent of its gross revenues from business under the franchise.
>
> 3. Paragraph 5 of section III provides in part as follows:
>
> "That the said grantee, his or its successors or assigns, shall not, without the consent of the town of Emeryville, evidenced by ordinance duly passed by the board of trustees thereof, sell or transfer its property or any of the rights or privileges authorized or granted by said franchise to any person, company, combination, trust or corporation now engaged in the telephone business in the town of Emeryville, and shall not at any time enter into any agreement directly or indirectly with any person, company, trust, combination or corporation now engaged in the telephone business in the town of Emeryville concerning the rate to be charged for telephone service."

On March 15, 1912, Bay Cities Home Telephone Company transferred all its physical properties through the instrumentality of Home Long Distance Telephone Company, a corporation created for that purpose, to The Pacific Telephone and Telegraph Company. By making this transfer eight days before the effective date of the Public Utilities Act, the parties avoided the necessity of applying to the Railroad Commission for authority to make the transfer. The Bay Cities Company, however, failed to transfer its franchise. Hence it now becomes necessary, under the provisions of sections 50 and 51 of the Public Utilities Act, to secure this Commission's authorization before the company can

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transfer its franchise and before The Pacific Telephone and Telegraph Company can exercise rights thereunder.

It has been contended that the above mentioned transfer by the Bay Cities Home Telephone Company of its tangible property to The Pacific Telephone and Telegraph Company was a violation of the conditions of the franchise.

In order to settle this contention and to enable Bay Cities Home Telephone Company to discharge the sureties on its bond in the sum of $1,000.00 given to the town of Emeryville to insure the faithful performance of the provisions of the franchise, a compromise has been entered into between the various parties which is set forth in Ordinance No. 130, passed by the board of trustees of the town of Emeryville on January 18, 1915. Copy of said ordinance is attached to the petition herein and marked Exhibit "A." Reference is hereby made thereto.

The ordinance provides in part as follows:

1. Town of Emeryville consents to the sales of March 15, 1912
2. Town of Emeryville consents to the transfer to The Pacific Telephone and Telegraph Company of the franchise granted by Ordinance No. 76.
3. The Pacific Telephone and Telegraph Company agrees to pay to the town of Emeryville two per cent of its gross receipts annually, as prescribed by Ordinance No. 76.
4. The Pacific Telephone and Telegraph Company agrees to execute a bond in favor of the town of Emeryville in the sum of $1,000.00 for the faithful performance of the franchise granted by Ordinance No. 76.
5. The Pacific Telephone and Telegraph Company agrees to furnish without cost to the town of Emeryville, two main telephones and four extension telephones, and also to allow the town of Emeryville certain privileges in connection with its fire alarm and police patrol systems.

The ordinance also provides for the discharge of the sureties of Bay Cities Home Telephone Company and the cancellation of all existing agreements for furnishing telephone service to the town of Emeryville by The Pacific Telephone and Telegraph Company, Home Telephone Company of Alameda County, Bay Cities Home Telephone Company and Home Long Distance Telephone Company.

At the hearing of this application on June 22, 1915, no opposition was presented thereto, and I shall accordingly recommend that this petition be granted.

I submit the following form of order:

ORDER.

Bay Cities Home Telephone Company having applied to the Railroad Commission for an order authorizing the transfer to The Pacific Telephone and Telegraph Company of the rights and privileges granted by

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the town of Emeryville on March 25, 1907, by Ordinance No. 76, and The Pacific Telephone and Telegraph Company having applied for a certificate that public convenience and necessity require, and will require, the exercise by it of said rights and privileges, and the town of Emeryville having joined in said application;

And a public hearing having been held thereon, the Railroad Commission hereby authorizes said transfer and declares that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of said rights and privileges, but only on the following conditions, and not otherwise:

1. This order shall not become effective unless The Pacific Telephone and Telegraph Company shall file with the Railroad Commission, within thirty days from the date of the order herein, a stipulation executed on behalf of said company, by its officers thereunto duly authorized by a resolution of its board of directors, agreeing as follows:

(*a*) That the company accepts the transfer of the rights and privileges granted by the town of Emeryville by Ordinance No. 76 in good faith, intending to abide by every provision thereof, except in so far as expressly modified by the provisions of Ordinance No. 130, adopted by the town of Emeryville on January 18, 1915.

(*b*) That the company accepts the provisions of said Ordinance No. 130 of the town of Emeryville, intending in good faith to abide thereby.

(*c*) That the price paid for the physical properties of Bay Counties Home Telephone Company in the town of Emeryville shall not be taken before the Railroad Commission or any other competent public authority as representing for rate making or any other purposes the real value of the property.

(*d*) That the company does not, and never shall, claim in any proceeding before this Commission, or any other public body, a value for the franchise granted to Home Telephone Company of Alameda County by Ordinance No. 76 of the town of Emeryville in excess of the actual cost to The Pacific Telephone and Telegraph Company of acquiring said franchise.

2. The Railroad Commission reserves the right to revoke this order if The Pacific Telephone and Telegraph Company fails to comply with any of the provisions of its settlement with the town of Emeryville, as set forth in Ordinance No. 130, passed by the board of trustees of said town of Emeryville on January 18, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1915.

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Decisions Nos. 2554, 2555, grade crossings, not printed. See end of volume.

DECISION NO. 2556.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF THE DIAMOND AND CALDOR RAILWAY.

Case No. 169.

Decided July 2, 1915.

Investigation upon the Commission's own motion to determine the various elements entering into the value of respondent's property.

Findings of fact: That the original cost of the operative physical property of respondent as of June 30, 1912, is the sum of $441,377.58; that the reproduction cost of its operative physical properties as of June 30, 1912, is the sum of $539,629.76, without the use of multiples in finding land values, $535,590.91; that the present value of the operative physical properties as of June 30, 1912, is the sum of $453,770.95, without the use of multiples in finding land values, $449,732.10.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This proceeding was brought on the Railroad Commission's initiative for the purpose of ascertaining the various elements entering into the value of the property of the Diamond and Caldor Railway, hereinafter termed the railway. The property in question is situated in El Dorado County, California. For the general procedure in these valuation cases and for a general description of the work performed by the Commission's engineering department, reference is hereby made to the Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company, and Case No. 210, being the matter of ascertaining the value of the property of the Tonopah and Tidewater Railroad Company.

These valuations were undertaken under section 20 of the Stetson Act, effective February 10, 1911, and continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to this proceeding are sections 47 and 70. As in the cases referred to so here also, I shall confine myself to making findings of fact bearing on the question of the value as shown by the evidence in this case, and shall not make a finding on the question of the ultimate value of the property, irrespective of the purpose for which the value is ascertained.

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As is usual in these valuation proceedings I shall, in connection with this inquiry, consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction cost, as defined.
6. Reproduction cost less depreciation, as defined.

I will first define the three elements of value which I propose to find:

> The term "original cost" means the original book cost, and is defined as the actual expenditures chargeable to capital account in accordance with the Interstate Commerce Commission's classification, in cash or its equivalent in terms of cash, by the public utility for its operative property in the State of California, as of the date of the valuation.
>
> The term "reproduction cost" is defined as the estimated cost in cash of acquiring the operative right of way and real estate and of reproducing, in the condition in which it was acquired, the other physical property of the public utility in the State of California, as of the date of the valuation; to which are added overhead expenditures for engineering, law, interest and other similar items.
>
> The term "reproduction cost less depreciation" is defined as the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, inadequacy, or other causes, this diminution being called depreciation, and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called appreciation.

In accordance with this Commission's order dated March 11, 1912, the railway on April 4, 1913, filed an inventory of its property, together with a statement of original cost and an estimate of its reproduction cost and reproduction cost less depreciation, as of June 30, 1912. A copy of the company's final summary sheet is attached to this decision and marked Exhibit "A."

On September 30, 1913, the engineering department submitted to the Commission its detailed valuation report as of June 30, 1912, a copy of which was furnished to the company. A copy of the final summary sheet of this report is attached hereto and marked Exhibit "B."

Prior to the hearing in this proceeding the company's engineer took up with the engineering department of this Commission certain objections to its valuation report, and in all cases where quantities and unit prices were at issue an agreement was reached. At the hearing held May 17, 1915, these items of differences were brought up and discussed, and it was agreed that the engineering department should prepare a supplemental report covering all such items. Subsequent thereto the engineering department submitted to the Commission a supplemental report embodying all changes and corrections decided upon, and a copy

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of this supplemental report was furnished to the company. The changes made by the engineering department will hereafter be considered. A copy of the revised final summary sheet containing the Commission's findings in this case is attached hereto and marked Exhibit "C."

1. Organization, construction and operation.

The Diamond and Caldor Railway was organized by the officers and directors of the California Door Company and was incorporated under the laws of California on February 9, 1904, to engage in the business of a common carrier through the construction of a narrow gauge steam railway. The road at this date is owned by the same company and is utilized almost exclusively in the transportation of lumber from the mill of the California Door Company at Caldor to Diamond Springs, a distance of about 33 miles, where a connection exists with the Southern Pacific Company's line.

The road was first built as a private road, and the California Door Company had construction work well under way before it was decided upon to incorporate as a separate and distinct company and operate the road as a common carrier. Prior to the construction of the line the lumber from the California Door Company's mill at Caldor was hauled the thirty odd miles to the railway of the Southern Pacific Company by teams, and in the haste to do away with this expensive and inadequate transportation, the railroad was built as quickly and cheaply as possible. Since the road was placed in operation, however, and as rapidly as possible, the company has renewed much of the material, filled in several trestles and eliminated some of the sharpest curves.

The country traversed by this road is all mountainous and necessitated heavy grades and a great deal of sharp curvature. The maximum grade is 4½ per cent and the maximum curve is 58 degrees. There are sixty frame trestles on the road.

The equipment of this company consists of five Shay locomotives, one combination passenger and baggage car, one Thomas automobile with track wheels, seventy-six freight cars, one water tank car, one oil tank car and two work cars. Between Diamond Springs and Caldor one passenger and one freight train are operated daily except Sunday.

2. Stocks and bonds.

At the time of incorporation of the railway, on February 9, 1904, there were authorized 4,800 shares of capital stock at a par value of $50.00 per share. The entire amount authorized was subscribed for at the time of the organization and all shares with the exception of five were issued to the California Door Company. As the progress of construction demanded, the entire amount of capital stock, $240,000.00, was paid into the treasury.

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Although the road was open and handling commercial freight in November, 1904, the construction accounts were not closed until December 31, 1907. The following dividends were paid on the capital stock out of the earnings during that period:

March 21, 1906, 8 per cent	$19,200 00
April 5, 1907, 10 per cent	24,000 00

Since the closing of the construction accounts dividends have been paid as follows:

March 17, 1909, 6 per cent	$14,400 00
March 16, 1910, 6 per cent	14,400 00
March 20, 1912, 8 per cent	19,200 00
March 19, 1913, 5 per cent	12,000 00
March 18, 1914, 5 per cent	12,000 00
Total dividends paid	$115,200 00

On March 1, 1907, the stockholders authorized the issuance of first mortgage, 20-year, 5 per cent bonds to the amount of $240,000.00 covered by all corporate property of the railway company. As shown by the company's report to this Commission for the year ending June 30, 1914, there are outstanding bonds to the amount of $128,000.00 while bonds to the amount of $90,000.00 are held in the treasury. Since 1908 the company has paid off and canceled bonds to the amount of $22,000.00.

The last annual report further shows an item of "miscellaneous accounts payable," $102,840.18, and an "appropriated surplus" of $57,258.73.

3. Revenues and expenses.

Practically the entire revenue received by the railway is derived from the hauling of lumber for the owning company. The passenger revenue averages less than $2,000.00 per year.

For the three years ending June 30, 1914, a gross income, as shown by the company's annual report, less operating expenses, showed a decided decrease, viz., from $24,873.03 for 1912 and $26,483.58 for 1913 to $14,732.92 for 1914, or a decrease of $11,750.66 over the preceding year. The report also shows that included in these amounts is an item received for the hire of equipment to the California Door Company at an average yearly rental of approximately $3,400.00. The following table presents various revenues, expenses and traffic statistics for the

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years ending June 30, 1912, 1913 and 1914, as shown by the annual reports of this company to this Commission:

Item No.	Item	Year ending 1912	Year ending 1913	Year ending 1914
1.	Mileage—main line	33.00	33.00	33.00
	Operating revenues.			
2.	Freight traffic	$80,990 58	$72,647 50	$62,017 22
3.	Passenger traffic	2,098 75	1,966 45	1,447 35
4.	Total transportation revenue	83,089 33	71,613 95	63,464 57
	Hire of equipment	3,295 76	3,128 48	3,590 88
5.	Maintenance of way and structures	22,126 01	16,572 86	16,805 37
6.	Maintenance of equipment	7,823 16	4,814 19	5,657 86
7.	Traffic expenses		1,575 00	1,500 00
8.	Transportation expenses	19,165 89	16,187 28	14,583 44
9.	General expenses	5,618 59	5,400 14	6,211 32
10.	Total operating expenses	54,733 65	41,549 47	44,757 99
11.	Ratio expenses to revenues	65.87%	59.71%	70.52%
12.	Net operating revenue	28,355 68	30,064 48	18,706 58
13.	Railway tax accruals	3,482 65	3,580 90	3,973 66
14.	Operating income	24,873 03	26,483 58	14,732 92
15.	Gross income	86,385 09	78,042 43	67,055 45
	Deductions from income.			
16.	Interest accrued on funded debt	7,050 00	6,600 00	6,750 00
17.	Interest, unfunded debt	5,276 74	5,308 19	3,440 88
18.	Total deductions	12,326 74	11,908 19	10,190 88
19.	Net income	15,842 05	18,003 87	8,132 92
	Reserves from income or surplus.			
20.	Equipment depreciation		3,874 18	6,721 91
21.	Surplus account	50,536 82	50,536 82	50,536 82
	Traffic statistics.			
22.	Number of passengers carried earning revenue	1,330	1,232	861
23.	Number of passengers carried one mile	35,063	34,427	24,111
24.	Average distance carried, miles	26.36	27.94	28.00
25.	Average amount received from each passenger	$1 58	$1 60	$1 68
26.	Average receipt per passenger per mile, cents	5.98	5.71	6.00
27.	Number of tons carried	31,718	28,221	24,717
28.	Number of tons carried one mile	1,042,643	928,722	813,095
29	Average distance haul of one ton, miles	32.90	32.91	32.93
30.	Average amount received from each ton	$2 55	$2 57	$2 51
31.	Average receipt per ton mile, cents	7.76	7.82	7.62

4. Original cost.

The valuation submitted by the company showed the original cost of this road to be $502,312.08, as shown by Exhibit "A" attached hereto. Upon investigation it was found that this figure was not the actual cost of construction, but represented the best available cost estimate by the company's engineer.

As heretofore stated, the road was started as a private venture to facilitate the business of the California Door Company, and at the time construction was commenced (1903) it was the company's desire to get the track laid to the mill at Caldor as quickly as possible, so that the lumber could be hauled out while the weather permitted. Therefore,

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before completion, but as soon as conditions would permit, the road was put into operation. After the accumulated lumber was delivered at Diamond Springs construction was continued and carried on until December, 1907, practically four years after the construction was started. Due to the hauling of this large amount of accumulated lumber from Caldor to Diamond Springs the earnings for the year 1903 were above normal, and instead of being applied to construction purposes were paid out as dividends on the capital stock. Under the Interstate Commerce Commission's classification for road and equipment of steam roads, all earnings during construction are to become a credit to the construction account, and the engineering department in its valuation report properly deducted this item from the original cost.

An investigation made by the auditing department of this Commission showed that the books of the company had not been kept in accordance with the present prescribed classification of accounts. However, it is possible to make adjustments and segregate all charges to their proper accounts. This was done with the result that the original cost was found by the engineering department to be $512.507.31 and, after deducting the item of earnings during construction, amounting to $71,129.73, the total original cost, as shown in Exhibits "B" and "C," amounts to $441,377.58.

I am satisfied to accept the figure of the engineering department, and find as a fact that the original cost, as that term has heretofore been defined, of the operative property of the Diamond and Caldor Railway, as of June 30, 1912, is the sum of $441.377.58.

5. Reproduction cost.

The company in its valuation states that the reproduction cost amounts to $582,196.41. The engineering department in its valuation finds this cost to be $532.834.94, as shown by Exhibit "B," being a decrease of $49,361.47. The reason for this difference is explained in the detailed report of the engineering department, to which reference is hereby made.

The company previous to and at the hearing held in this case, made objections to certain accounts as shown by the engineering department. These items were investigated and a supplemental report has been prepared covering all items in question. All changes and corrections caused by the objections of the company have been shown in detail in the supplemental report, and I do not consider it necessary to go into these items in detail.

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The increases made to the individual accounts were as follows:

I.C.C. Acct. No.	Item		Amount
7	Ties		
8	Rails		$1,969 59
10	Track fastenings and other material		223 85
11	Ballast		4,000 00
12	Trackluying and surfacing		
	Overhead expenses:		
	Engineering	$309 67	
	Law	61 93	
	Interest	196 95	
	Expenses	32 83	
			601 38
	Total increase		$6,794 82

This amount added to the original, as shown in Exhibit "B," gives a revised total of $539,629.76, as shown by Exhibit "C." This amount, it will be noted, is higher than the original cost by $98,252.18.

In the original valuation report, as submitted by the engineering department, Account No. 2, Right of Way and Station Grounds, was determined by adding to the present market value of the land a so-called "multiplier," assumed cost of acquisition and interest charges. Since the time of this valuation the Supreme Court of the United States has in unmistakable terms rendered its decision on the so-called multiple method of valuation. In the decision in the Minnesota Rate Cases the court says:

> "Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, can not properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right of way, yards and terminals upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of 'engineering,' 'superintendence,' 'legal expenses,' 'contingencies' and 'interest during construction.'"

In my opinion the reasoning of the court is altogether sound. It is, of course, impossible to "reproduce" land in the sense that other

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physical elements of railroad property can be reproduced and their reproduction cost determined. The *value* of land must therefore be found and not the "reproduction cost." If this value is taken as the present day *market* value, without the addition of arbitrary multipliers, assumed costs of acquisition and interest charges, no injustice is done to the owner. If it is found that land originally cost more or less than the present market value, the facts should be shown in the proper place.

There is no necessity, however, to here change the engineering department's figures, and it is sufficient to point out that the arbitrary additions to the present market value of this company's lands, by reason of applying multiples, cost of acquisition and interest, amount to $4,038.85. If in any future case the question of the valuation of this property should become relevant, the Commission may see fit to hold that this sum should be deducted from the grand totals shown in Exhibit "C" under the headings "reproduction cost" and "reproduction cost less depreciation."

I find, therefore, as a fact that the reproduction cost, as that term has hereinbefore been defined, of the operative property of the Diamond and Caldor Railway, as of June 30, 1912, is the sum of $539,629.76.

I find also that the reproduction cost of this property, if the "market value" of lands is used without the addition of multipliers and other arbitrary percentages, is the sum of $535,590.91.

6. Reproduction cost less depreciation.

The reproduction cost less depreciation, as reported by the company and shown in Exhibit "A," is $491,848.91. This same item as ascertained by the engineering department in its original valuation report, is $425,669.10, as shown by Exhibit "B."

The objections made by the company to certain accounts under the heading of reproduction cost, are reflected in the same accounts under this heading, and necessitated certain changes and corrections. The details of these changes are set forth in the supplemental report of the engineering department and hereinbefore referred to.

The summary of the revised totals of the accounts affected is as follows:

I.C.C. Acct. No.	Item	Amount
7	Ties	$11,217 32
8	Rails	6,548 63
10	Track fastenings and other material	1,559 40
11	Ballast	4,000 00
12	Tracklaying and surfacing	4,175 12
	Overhead expenses	601 38
	Total increases	$28,101 85

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These increases, included with the original allowances, give a revised grand total for reproduction cost less depreciation of $453,770.95.

I find, therefore, that the reproduction cost less depreciation, as that term has hereinbefore been defined, of the operative property of the Diamond and Caldor Railway, as of June 30, 1912, is the sum of $453,770.95.

I find also as the reproduction cost less depreciation of this property if the "market value" of lands is used, without the additional multipliers and other arbitrary percentages, is the sum of $449,732.10.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

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EXHIBIT "A."

Name of owner, Diamond and Caldor Railway; operating company, same; from Diamond Springs to Caldor; miles main line track, 33.06; miles yard tracks, etc., 3.16; total miles, 56.22.
Valuation as of June 30, 1912; compiled by the railway.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
1	1	2	Right of way and station grounds	$5,762 08	$7,892 72	100	$7,892 72
2	2	3	Real estate				
3	3	4	Grading	97,043 77	98,946 97	120	108,136 18
4	4	5	Tunnels				
5	5	6	Steel bridges and trusses	2,655 05	4,588 75	89	4,101 44
6	6	6	Pile and frame trestles	61,198 25	71,147 17	85	60,470 20
7	7	6	Culverts	2,565 85	2,762 46	80	2,210 16
8	8	7	Ties	31,919 53	55,783 27	70	39,109 10
9	9	8	Rails	74,991 20	88,787 40	80	71,029 92
10	10	9	Frogs and switches	1,215 72	1,800 00	72	1,295 00
11	11	10	Track fastenings and other material	9,341 02	11,181 50	80	8,945 20
12	12	11	Ballast				
13	13	12	Tracklaying and surfacing	58,462 94	67,232 40	80	53,785 92
14	14	13	Roadway tools	438 38	438 38	79	346 13
15	15	14	Fencing right of way				
16	16	15	Crossings and signs	330 76	369 72	80	305 78
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telephone lines	2,391 64	3,964 03	80	3,171 22
20	20	18	Station buildings and fixtures	276 10	317 52	80	254 02
21	21	18	Platforms, walks, paving and curb	101 28	128 26	90	115 50
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses	3,378 87	3,903 60	90	3,513 25
24	24	20	Transfer and turntables, cinder pits, etc.	105 90	180 00	80	144 00
25	25	20	Miscellaneous shop buildings and structures	153 29	168 61	80	134 88
26	26	21	Shop machinery and tools	1,033 35	1,229 70	90	1,112 95
27	27	22	Water stations	1,098 31	1,213 91	70	849 76
28	28	23	Fuel stations	3,074 10	3,441 80	90	3,077 63
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	199 13	219 03	80	176 89
			Total classes 1 to 36, inclusive				
37	----	1	Engineering -- per cent, 1 to 36, inclusive	15,533 30	15,533 30	100	15,533 30
38	37	32	Transportation of men and material				
39	38	33	Rent of equipment				
40	38	34	Repairs of equipment				
41	----	35	Earning and operating expenses during construction				
42	----	35½	Injuries to persons				
43	----	36	Cost of road purchased				
			Total classes 1 to 43, inclusive				
44	39	37	Steam locomotives	49,618 45	54,576 28	74	40,182 27
45	----	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars	3,161 45	3,635 67	70	2,544 97
48	42	41	Work equipment	40,973 93	47,120 01	70	32,984 00
49	43	42	Floating equipment	1,794 32	1,794 32	88	1,586 89
			Total classes 1 to 49, inclusive				
50	----	43	Law expenses -- per cent, classes 1 to 36, inclusive				
51	44	44	Stationery and printing	122 39	134 62	100	134 62
52	44	45	Insurance	2,811 79	3,092 96	100	3,092 96
53	45	46	Taxes	251 22	276 34	100	276 34
			Total classes 1 to 53, inclusive				
54	----	47	Interest and commission -- per cent, classes 1 to 53, inclusive				
55	45	48	Other expenditures	21,716 77	21,716 77	100	21,716 77
56	----	---	Contingencies, -- per cent, classes 1 to 53, inclusive	8,618 94	8,618 94	100	8,618 94
57	46	----	Stores and supplies on hand for use in California				
			Grand total	$502,312 08	$582,196 41	84	$491,848 91
			Average per mile for main line track	15,193 95	17,610 30	84	14,877 46

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EXHIBIT "B."

Name of owner, Diamond and Caldor Railway; operating company, same; division, El Dorado County; from Diamond Springs to Caldor; miles main line track, 23.06; miles yard tracks, etc., 3.16; total miles, 26.22.
Valuation as of June 30, 1912; M. M. Cooke, field inspector and office compiler; date compiled, June 16, 1913.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
1	1	2	Right of way and station grounds	$5,762 08	$9,551 85	100	$9,551 85
2	2	3	Real estate				
3	3	4	Grading	92,808 90	98,306 68	107	105,727 95
4	4	5	Tunnels				
5	5	6	Steel bridges and trusses		4,578 93	72	3,284 24
6	6	6	Pile and frame trestles	65,272 06	72,032 51	50	36,016 25
7	7	6	Culverts		2,054 64	52	1,074 57
8	8	7	Ties	33,929 12	44,849 26	50	22,434 62
9	9	8	Rails	74,098 56	94,832 01	83	78,354 86
10	10	9	Frogs and switches	1,054 76	2,086 70	71	1,486 56
11	11	10	Track fastenings and other material	9,358 03	11,688 67	63	7,413 38
12	12	11	Ballast				
13	13	12	Tracklaying and surfacing	59,316 16	34,792 59	71	24,702 73
14	14	13	Roadway tools	60 44	555 80	57	317 07
15	15	14	Fencing right of way	81 70	1,552 88	50	776 44
16	16	15	Crossings and signs	139 79	290 01	57	166 53
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telephone lines	2,394 61	3,973 81	50	1,986 90
20	20	18	Station buildings and fixtures	276 10	283 00	60	169 80
21	21	18	Platforms, walks, paving and curb				
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses	7,336 42	3,859 13	74	2,843 86
24	24	20	Transfer and turntables, cinder pits, etc.		184 50	60	110 70
25	25	20	Miscellaneous shop buildings and structures		182 45	88	160 67
26	26	21	Shop machinery and tools	1,173 71	1,363 20	90	1,233 16
27	27	22	Water stations	1,068 31	1,244 26	50	622 12
28	28	23	Fuel stations	3,074 10	3,527 85	90	3,175 07
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	393 08	526 09	50	263 05
			Total classes 1 to 36, inclusive	$357,507 96	$392,336 82	77	$301,872 38
37	----	1	Engineering 5 per cent, 3 to 36, inclusive	15,533 30	19,139 25	100	19,139 25
38	37	32	Transportation of men and material				
39	38	33	Rent of equipment				
40	38	34	Repairs of equipment				
41	----	35	Earning and operating expenses during construction	71,129 75			
42	----	353	Injuries to persons				
43	----	36	Cost of road purchased				
			Total classes 1 to 43, inclusive	$301,911 53	$411,476 07	78	$321,011 63
44	39	37	Steam locomotives	49,298 60	50,434 00	82	41,203 00
45	----	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars	3,244 43	5,303 00	78	4,165 00
48	42	41	Work equipment	41,097 12	39,259 00	85	33,472 00
49	43	42	Floating equipment	1,698 26	2,424 00	77	1,878 60
			Total classes 1 to 49, inclusive	$397,249 96	$508,896 07	79	$401,730 23
50	----	43	Law expenses 1 per cent, classes 3 to 36, inclusive	1,206 45	3,827 85	100	3,827 85
51	44	44	Stationery and printing	142 24			
52	44	45	Insurance	3,349 33			
53	45	46	Taxes	301 22			
			Total classes 1 to 53, inclusive	$402,249 20	$512,723 92	79	$405,558 08
54	----	47	Interest and commission 3 per cent, classes 3 to 53, inclusive	23,363 86	15,095 16	100	15,095 16
55	45	48	Other expenditures, ½ of 1 per cent, classes 3 to 53, inclusive	13,264 52	2,515 86	100	2,515 86
56	----	----	Contingencies 2.5 per cent, classes 1 to 53, inclusive				
57	46	----	Stores and supplies on hand for use in California	2,500 00	2,500 00	100	2,500 00
			Grand total	$441,377 58	$532,834 94	80	$425,669 10
			Average per mile for main line track	13,351 00	16,117 00	-------	12,875 00

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EXHIBIT "C."

Owning company, Diamond and Caldor Railway; operating company, same; from Diamond Springs to Caldor; county, El Dorado.

Valuation as of June 30, 1912; submitted with report of Richard Sachse, chief engineer; date compiled, May, 1915; main line first track, 33.06 miles; yard tracks, sidings, etc., 3.16 miles; total, 36.22 miles.

Class No.	Form No.	Acct. No. I. C. C.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
37	----	1	Engineering	$15,533 30	$19,448 92	100	$119,448 92
1	1	2	Right of way and station grounds	5,762 08	9,551 85	100	9,551 85
2	2	3	Real estate				
3	3	4	Grading	92,808 90	98,306 68	107	105,727 95
4	4	5	Tunnels				
5	5	6	Steel bridges and trusses		4,578 93	72	3,284 24
6	6	6	Pile and frame trestles	65,272 06	72,032 51	50	36,016 25
7	7	6	Culverts		2,054 64	52	1,074 57
8	8	7	Ties	33,929 12	44,869 26	75	33,651 94
9	9	8	Rails	74,008 56	96,801 60	88	84,903 49
10	10	9	Frogs and switches	1,054 76	2,086 70	71	1,486 56
11	11	10	Track fastenings and other material	9,358 03	11,912 52	75	8,972 78
12	12	11	Ballast		4,000 00	100	4,000 00
13	13	12	Tracklaying and surfacing	59,316 16	34,792 59	83	28,877 85
14	14	13	Roadway tools	60 44	555 80	57	317 07
15	15	14	Fencing right of way	81 70	1,552 88	50	776 44
16	16	15	Crossings and signs	139 79	290 01	57	166 53
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telephone lines	2,394 64	3,973 81	50	1,986 90
20	20	18	Station buildings and fixtures	276 10	283 00	60	169 80
21	21	18	Platforms, walks, paving and curb				
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses	7,336 42	3,859 13	74	2,843 86
24	24	20	Transfer and turntables, cinder pits, etc.		184 50	60	110 70
25	25	20	Miscellaneous shop buildings and structures		182 45	88	160 67
26	26	21	Shop machinery and tools	1,173 71	1,363 20	90	1,233 16
27	27	22	Water stations	1,068 31	1,244 26	50	622 12
28	28	23	Fuel stations	3,074 10	3,527 85	90	3,175 07
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	366 08	526 09	50	263 05
38	37	32	Transportation of men and material				
39	38	33	Rent of equipment				
40	38	34	Repairs of equipment				
41	----	35	Earning and operating expenses during construction	71,129 73			
42	----	35½	Injuries to persons				
43	----	36	Cost of road purchased				
44	39	37	Steam locomotives	49,248 60	50,434 00	82	41,203 00
45	----	38	Electric locomotives				
46	40	39	Passenger train cars	3,244 43	5,303 00	78	4,165 00
47	41	40	Freight train cars	41,097 12	39,259 00	85	33,472 00
48	42	41	Work equipment	1,698 28	2,424 00	77	1,878 60
49	43	42	Floating equipment				
50	----	43	Law expenses		3,889 78	100	3,889 78
51	44	44	Stationery and printing	142 24			
52	44	45	Insurance	3,319 33			
53	45	46	Taxes	301 22			
54	----	47	Interest and commission	23,393 86	15,292 11	100	15,292 11
55	45	48	Other expenditures	12,264 52	2,548 69	100	2,548 69
57	46	----	Stores and supplies on hand for use in California	2,500 00	2,500 00	100	2,500 00
			Grand total	$441,377 58	$539,629 76	84	$473,770 95
			Average per mile for main line track	12,351 00	16,323 07	84	13,725 68

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DECISION No. 2557.

IN THE MATTER OF THE APPLICATION OF YOLO COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT A PUBLIC ROAD AT GRADE ACROSS THE TRACK OF SOUTHERN PACIFIC COMPANY IN ROAD DISTRICT No. 5 OF YOLO COUNTY, CALIFORNIA.

Application No. 1667.

Decided July 2, 1915.

County of Yolo applies for permission to open to the public a private road crossing over the tracks of Southern Pacific Company in such county, to which crossing the railroad company objects, and an investigation showing that the proposed crossing is a public necessity, also that owing to a clear view of the track and the few trains passing daily it will be comparatively safe, application granted.

M. H. Stitt, for Applicant.

Geo. D. Squires, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was made, and the hearing was subsequently held, under section 2694 of the Political Code, as amended January 2, 1912, which requires that after viewers have been appointed to view a crossing which a county proposes to open, a certified copy of the petition requesting the opening of such crossing, and of the order appointing viewers, be submitted to the Commission, and a hearing thereafter held, at which hearing the Commission shall hear the evidence and "determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation and maintenance, use and protection of said crossing."

The road which Yolo County desires permission to construct across the track of Southern Pacific Company in this application is now a twenty-foot private road which has been used for many years and is now constructed across the track at the point of crossing covered by the application. It is the intention of the county to take this private road as a county road and widen it to forty feet. This highway is approximately north and south and joins an east and west county road about 200 feet south of the point where the private road crosses the track. This east and west county road crosses the same track about 600 feet from the point where the private road crosses it.

The evidence taken at the hearing shows that there are several ranchers dependent upon this road for means of access to and from their ranches and some outlet must be provided for them.

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The Southern Pacific Company, in opposing the granting of the application, stated that it would be feasible to construct a county road on the north side of its track, possibly using part of its right of way to form a connection between the private road and the present county road so that the existing crossing 600 feet west of the private crossing could be used in lieu of the crossing proposed.

There are two objections to this scheme. The first is the fact that the width of a possible road in the location proposed by the Southern Pacific Company would be seriously restricted by a stream which encroaches on the railroad company's right of way, and the second is because the main travel which will come from the road sought to be opened to the county road will be east and a detour of over a thousand feet and two sharp turns will be necessitated, adding largely to the inconvenience of those who expect to use the crossing with four and six horse teams and heavy farm machinery.

The crossing on the county road now existing is more open than the proposed crossing would be as the two corners at the intersections of the proposed road with the right of way are set out in orchards. The train service on this branch of the Southern Pacific is light, and by removing some of the trees from these intersections, I believe the proposed crossing can be made in a manner satisfactory from a safety viewpoint.

I recommend the following form of order:

ORDER.

Yolo County, California, having applied to the Commission for permission to construct a public road at grade across the track of Southern Pacific Company in Yolo County Road District No. 5, at a point more particularly described in the application and shown on the map attached to same, and a public hearing having been held, and it appearing that this application should be granted subject to certain conditions,

It is hereby ordered that permission be and the same is hereby granted Yolo County, California, to construct a public highway crossing at grade over the track of Southern Pacific Company at the point and in the manner applied for, subject to the following conditions and not otherwise, viz:

(1) Any expense attendant upon changing the present farm crossing to a public highway crossing shall be borne by the applicant.

(2) The expense of maintaining the crossing up to a line two (2) feet outside of the rails of Southern Pacific Company shall be borne by applicant. The expense of maintaining the crossing between the rails and to a line two feet outside thereof shall be borne by Southern Pacific Company.

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(3) The crossing shall be made with grades of approach not exceeding four (4) per cent and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(4) The applicant shall at its own expense remove or cause to be removed all of the trees within the two triangles north of the track of Southern Pacific Company bounded as follows:

1. Beginning at a point, on the westerly right of way line of this proposed road, which is 100 feet northerly from the intersection of the westerly line of this road with the northerly right of way line of Southern Pacific Company; thence southerly along the westerly right of way line of this road 100 feet to the point of intersection previously mentioned; thence westerly 100 feet along the right of way line of the Southern Pacific Company to a point; thence in a northeasterly direction along a straight line to the point of beginning.

2. Beginning at a point, on the easterly right of way line of this proposed road, which is 150 feet northerly from the intersection of the easterly right of way line of this road with the northerly right of way line of Southern Pacific Company; thence southerly along the easterly right of way line of this road 150 feet to the point of intersection previously mentioned; thence easterly 150 feet along the northerly right of way line of the Southern Pacific to a point; thence in a northwesterly direction along a straight line to the point of beginning.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

DECISION No. 2558.

IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR PERMISSION TO CLOSE ITS OFFICE AND DISCONTINUE TELEGRAPH SERVICE AT SAN ANDREAS, CALIFORNIA.

Application No. 1674.

Decided July 2, 1915.

Western Union Telegraph Company, contending that its office at San Andreas is operated at a loss, petitions the Commission for permission to close and abandon same, and though the Commission does not hold that each individual office of

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such a large system as applicants should be run to show a profit, that of necessity certain of the smaller offices necessary and useful to the public must be operated at a loss, application granted, provided, applicant shall establish and maintain an office at Angels Camp.

A. H. May, for The Western Union Telegraph Company.

Jas. T. Shaw, for The Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application by The Western Union Telegraph Company for permission to close its office and discontinue telegraph service at San Andreas was filed with the Railroad Commission immediately following the filing of an application by Chas. P. Snyder, who owns and operates a telegraph line between Angels Camp and San Andreas, for permission to discontinue its operation. Heretofore telegrams forwarded from or addressed to Angels Camp have been transferred by The Western Union Company at San Andreas, and according to the present application these telegrams have constituted the greater part of the business handled by The Western Union Company at San Andreas. It is accordingly by reason of the contemplated withdrawal of the Angels Camp business that The Western Union Company is now seeking permission to close its San Andreas office upon the representation that the receipts from the balance of its San Andreas business are not sufficient to continue the office except at a considerable loss.

The line between Angels Camp and San Andreas, owned by Mr. Snyder, reaches only these two points and, according to the testimony which was offered at the hearing of the application for permission to discontinue its use, the gross amount of business handled over it is not sufficient to meet operating expenses. Its continued operation would, therefore, result in loss to the owner. The Western Union Telegraph Company, however, owns and operates telegraph lines extending not only throughout California, but throughout the United States and extending also into foreign territory, and while it may be shown that the continued operation of its San Andreas office, if the business arising from the Angels Camp office were to be withdrawn, would result in a loss so far as that particular office is concerned, we can not overlook the fact that San Andreas is but one of a vast number of offices which go to make up its business as a whole, and it is but a very small unit of its entire system which its obligations to the public demand that it shall maintain. It goes without saying that this Commission does not admit that each unit in a system of such magnitude as that embraced in this applicant's system should be made to be profitable in and of itself. To grant that each separate unit should be made to be profitable would be to admit the right of the applicant to come before the

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Commission for authority to close any other or all of its offices, no matter how necessary or important their operation may be to the public, if they could be shown to be unprofitable when considered separately. The possible effect of such action, if taken, can not, of course, be ignored.

In this particular instance, it happens that The Pacific Telephone and Telegraph Company, which also handles telegraphic business, although it does not employ a telegraph operator at San Andreas has an office at this point, and if The Western Union Company were permitted to withdraw The Pacific Telephone and Telegraph Company will receive and forward telegrams by telephone. I do not wish to be understood to admit that any public utility engaged in the telegraph or telephone business in this State may at its pleasure shift its responsibilities to others who may happen to be so situated as to be able to assume and carry the responsibility, but in this case The Pacific Telephone and Telegraph Company has not objected, though given the opportunity to do so.

The hearing in this proceeding has also developed that, since Mr. Snyder desires to withdraw his telegraph service at Angels Camp, The Western Union Company in that event is willing to establish an office at Angels if it be permitted to withdraw from San Andreas. Ample public notice of the hearing of this application was given, but no one interested in Western Union service at San Andreas appeared to offer objection to the proposed withdrawal of the Western Union Company, and since such telegraphic business as may be offered after the discontinuance of the Western Union office at San Andreas may be handled by telephone over the lines of The Pacific Telephone and Telegraph Company, I am willing to recommend that this application be granted upon the condition that before it shall close its San Andreas office the applicant shall establish a telegraph office at Angels Camp with the understanding that, if after a sufficient time it should appear that its further continuance may not be warranted, the applicant may petition the Commission for permission to discontinue it.

The following order is recommended:

ORDER.

Application having been made by The Western Union Telegraph Company, a public utility corporation, for permission to close its office and to discontinue telegraph service at San Andreas, Calaveras County, California, and a public hearing having been duly held, and no objection other than as set forth in the preceding opinion appearing, and it appearing to this Commission, as further set forth in the preceding opinion, that such telegraphic business as may hereafter be offered at San Andreas may be transmitted by telephone over the lines of The Pacific Telephone and Telegraph Company,

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It is hereby ordered that this application be and it is hereby granted;

Provided that before the applicant, The Western Union Telegraph Company shall be permitted to close its office at San Andreas, it shall establish a telegraph office and maintain a telegraph operator at Angels Camp, Calaveras County, and shall publish, put into effect and file with this Commission on or before thirty days from the date of approval of this order its schedule of rates for Angels Camp, which rates shall conform to the rates at present in effect at its other offices located in the same square in which Angels Camp is located.

And provided further that this permission is not to be taken as approval of the rates hereinabove referred to, since the Commission has not passed upon their reasonableness.

And it is hereby further provided that this permission is not to be taken by this applicant or by any other public utility operating within this State as a precedent to be followed in other cases.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

DECISION No. 2559.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN PACIFIC COMPANY TO DISCONTINUE THE MAINTENANCE OF AN AGENT AT THE STATION OF WARM SPRINGS ON ITS WESTERN DIVISION.

Application No. 1474.

Decided July 2, 1915.

Southern Pacific Company, showing that its receipts from its station at Warm Springs do not justify the maintenance of an agent at such point, applies for permission to discontinue same as an agency station, which application is granted; provided applicant shall keep the present agent during the months of July and August, 1915, which covers the months of heaviest shipments from this point, and shall then maintain a caretaker to keep open its passenger waiting room and take care of such less carload freight as may be necessary.

Geo. D. Squires, for Applicant.

Thos. B. Dozier, for Charles A. Warren Company and A. D. Curtner, Protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of the Southern Pacific Company for permission to discontinue the maintenance of an agent at its station of Warm

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Springs on the San Jose branch of its Western division, it being alleged that the amount of business transacted at the station does not justify the maintenance of an agent. A public hearing was held at Warm Springs on June 30, 1915, at which time many interested parties appeared and gave testimony and the matter is now ready for decision.

The station of Warm Springs is located in Alameda County on the San Jose branch of the Western division of the Southern Pacific Company and is 3.6 miles east of the station of Irvington and 4.4 miles west of the station of Milpitas. The country adjacent to the station of Warm Springs is devoted to the raising of hay and grain and the smaller holdings to the raising of vegetables and garden truck, which finds a market in San Francisco and Oakland. There is some land used for the pasturage of cattle and horses.

Statements introduced as exhibits for the applicant show the following business as having been transacted at the station of Warm Springs during the year ending May 31, 1915:

	Tons	Revenue
Freight—		
Less than carload—received	290	$507 00
Less than carload—forwarded	376	482 00
	No. cars	
Carload—received	36	1,459 00
Carload—forwarded	137	2,229 00
		$4,677 00
Passenger—		
	No. tickets	
Tickets sold	*2,016	*$1,993 75
Total revenue		$6,670 75

NOTE.—Item marked (*) includes eight interline tickets aggregating revenue of $367.75.

The expense of maintaining an agent at Warm Springs consists of the salary of the agent at the rate of $75.00 per month and the expense of station supplies, fuel, lights, etc., which average about $8.00 per month, the annual expense being practically $1,000.00. The cost of maintaining the agency at Warm Springs is a considerable item in view of the amount of revenue received.

Hay constitutes the principal carload freight forwarded from this station, and moves during the months of June, July and August. These months are also those in which the greatest amount of less than carload shipments of vegetables and garden truck are forwarded and are the heaviest freight forwarding months of the year and those during which an agent is most required for the convenience of shippers in the transaction of the company's business.

It appears from evidence adduced at the hearing that a considerable volume of less than carload shipments of vegetables and garden truck

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which properly should be shipped from the station of Warm Springs have been hauled to and shipped from the station of Milpitas, this for the reason that buyers of such produce representing commission merchants of San Francisco and Oakland have made a practice of purchasing consignments at Milpitas and in some instances have offered higher prices for the same grades of produce at Milpitas than they would offer at Warm Springs. One of the witnesses protesting against the removal of the agent testified that he represented some 3,500 acres of land which was under lease to about forty tenants on the basis of a proportion of the value of the crop raised being assessed as rental, and that probably ninety per cent of the renters disposed of their products in Milpitas by reason of average higher prices being obtained over those available at Warm Springs, the commission buyers preferring Milpitas as their headquarters for the purchase of the farm products produced in this locality. It also appears that there is some automobile truck competition between Milpitas, Warm Springs and the wholesale markets of Oakland and San Francisco, and while this competition diverts freight that would otherwise be forwarded via the railroad of the applicant, Southern Pacific Company, the volume of the business so diverted is not definitely known.

A comparison of the business handled through the station of Warm Springs for the calendar years 1912, 1913 and 1914 indicates that the station is handling practically the same amount of business each year, the year 1913 showing a falling off due to a dry year and lessening the tonnage of products which would normally have been shipped during such year from the territory adjacent to Warm Springs.

In view of the foregoing facts I am of the opinion that the revenue derived from the business originating at and destined to the station of Warm Springs does not justify the amount which the applicant, Southern Pacific Company, is required to expend for the maintenance of an agent at this point. I am also of the opinion that the shippers and receivers of freight are entitled to the services of an agent during the months of June, July and August for the reason that the greatest number of shipments move during those months. At the hearing of this application it was suggested that a caretaker might be substituted for the agent for the period of one year and that after a year's trial of a caretaker, if it was found that shippers or receivers of freight were inconvenienced or subjected to extra expense by reason of the agent being removed, the matter could again be brought to the attention of the Commission. This proposed arrangement was satisfactory to the protestants and was agreed to by the attorney for the applicant, Southern Pacific Company.

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I therefore recommend the following form of order:

ORDER.

The Southern Pacific Company, having made application to this Commission for permission to discontinue the maintenance of an agent at its station of Warm Springs on the San Jose branch of its Western division for the reason that the amount of business transacted does not justify the maintenance of an agent, a public hearing having been held and the Commission being fully advised in the premises,

It is hereby ordered that the applicant, Southern Pacific Company, continue the maintenance of an agent at its station of Warm Springs during the months of July and August, 1915. It shall then employ and maintain for the period of one year and thereafter until the further order of this Commission, a competent caretaker whose duties shall comprise the keeping open of the passenger waiting room for the accommodation of the patrons of the applicant, the assisting of shippers in the preparation of shipping documents covering shipments to be forwarded, the receiving and caring for incoming less than carload freight shipments, placing same in warehouse and noting for the account of consignees all exceptions as to loss or damage in the same manner that would be in evidence were a regular agent employed; and

It is further ordered that the applicant, Southern Pacific Company, keep a true and accurate account of the business transacted at the station of Warm Springs for a period of one year from September 1, 1915, same to show the number of passengers boarding its trains and the revenue accruing therefrom; the number of tons of less than carload freight received and forwarded at this station, the revenue derived from each received and forwarded; the number of carloads of freight received and forwarded and the revenue derived from each received and forwarded; and shall submit the same to this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

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DECISION No. 2560.

IN THE MATTER OF THE APPLICATION OF CHAS. P. SNYDER, DOING A TELEGRAPH BUSINESS UNDER THE NAME OF THE ANGELS TELEGRAPH COMPANY, FOR AN ORDER AUTHORIZING HIM TO DISCONTINUE TELEGRAPH SERVICE.

Application No. 1648.

Decided July 2, 1915.

Applicant applies for permission to discontinue and abandon his telegraph line from Angels Camp to San Andreas, and as the Western Union Telegraph Company is making arrangements to establish an agent at Angels Camp, application granted.

Chas. P. Snyder, for The Angels Telegraph Company.

A. H. May, for The Western Union Telegraph Company.

Jas. T. Shaw, for The Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by Chas. P. Snyder, doing a public telegraph business under the name of The Angels Telegraph Company between Angels Camp and San Andreas, for an order of this Commission authorizing him to discontinue the operation of his line for telegraph service. The Western Union Telegraph Company now operates a telegraph office at San Andreas, and telegrams forwarded from or addressed to Angels Camp are transferred by Western Union lines at San Andreas.

The applicant has heretofore been engaged in law practice in Angels Camp and in conducting this practice has employed a clerk and stenographer who has also served as telegraph operator. Having been elected to the office of district attorney of Calaveras County he has discontinued his law practice at Angels Camp and removed his law office to San Andreas, the county seat, which will necessitate the employment of a telegraph operator for no other purpose than handling the telegraph business if this service is to be continued.

A hearing having been held at Angels Camp on June 17th, testimony was introduced to show that the receipts from the operation of this line since the removal of the applicant's law office from Angels Camp, are not sufficient to continue its operation except at an actual loss. It was shown also that the storms of the last winter have left the line inoperative, since which time telegrams have been forwarded by telephone to and from Angels over the lines of The Pacific Telephone and Telegraph Company; and it is claimed by the applicant that to place his line in

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proper repair to render its further operation possible will necessitate the expenditure of further capital which will not be warranted by the receipts.

There appears to be sufficient public necessity for the continuance of telegraph service at this point, however, and to further complicate the situation, The Western Union Telegraph Company, since this application was filed with the Commission, has followed with a further application for permission to discontinue its office at San Andreas on the representation that with the withdrawal of the Angels Camp business the receipts from its San Andreas office will be insufficient to continue its operation except at a considerable loss.

The testimony has disclosed, however, that The Western Union Telegraph Company now maintains a telegraph line with which certain of its other offices in this section are connected, and which passes directly through Angels Camp. It is admitted by that company that the cost of installing an office at Angels Camp and connecting it with this line would be comparatively small, and at the suggestion of the Commission it has secured a location for the establishment of an office and has employed an operator with the understanding that if, after a fair trial it should appear that its continuance may not be sufficiently justified, it may again come before the Commission with an application for permission to discontinue it.

While recognizing the public necessity and convenience in this case, it is also apparent that to require Mr. Snyder to make necessary repairs to his line and continue under the circumstances to serve the public would result in a personal loss to him. The willingness and readiness of The Western Union Company to assume the responsibility from which the applicant desires to be relieved offers at least a temporary solution of the situation to which I can see no present objection, and upon the condition that The Western Union Telegraph Company shall at once establish its office at this point I am willing to recommend that this application be granted and submit the following order:

ORDER.

Application having been made to this Commission by Chas. P. Snyder, conducting a public telegraph business at Angels Camp, Calaveras County, under the name of The Angels Telegraph Company, for an order authorizing him to discontinue the said telegraph business, and a hearing having been duly held, and it appearing to the Commission, as set forth in the foregoing opinion, that the public necessity and convenience will be protected and subserved by the agreement of The Western Union Telegraph Company to establish a telegraph office in Angels Camp,

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It is hereby ordered that this application be and it is hereby granted,

Provided, that The Western Union Telegraph Company shall at once establish a telegraph office in Angels Camp under the conditions referred to in the foregoing opinion.

This opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

DECISION No. 2561.

IN THE MATTER OF THE APPLICATION OF AUGUST OIL COMPANY TO PURCHASE FROM CALIFORNIAN AMALGAMATED OIL COMPANY, LIMITED, CERTAIN PROPERTY AND TO SECURE THE PURCHASE PRICE THEREOF WITH NOTES AND A MORTGAGE.

Application No. 1585.

Decided July 2, 1915.

August Oil Company, having drilled for oil and developed a supply of water which it sells to surrounding oil companies for boiler purposes, applies for permission to purchase certain water wells and properties from the Californian Amalgamated Oil Company, Limited, and to issue notes in payment therefor, and it appearing that the validity of the lease now held by the Californian company covering its properties is open to question and also considering the statements of applicant that it now has an abundance of water for all purposes, application denied without prejudice.

F. A. Homan, for Applicants.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of August Oil Company to purchase certain water utility property in Kern County from Californian Amalgamated Oil Company, Limited.

August Oil Company was organized April 2, 1910, for the purpose of producing oil in the West Side oil fields of Kern County. To date it has failed to secure oil in paying quantities, but has developed considerable water which it sells in the oil fields about Maricopa for boiler purposes.

In December, 1914, the company had forty-two consumers.

The property which the August Oil Company wishes to acquire consists of a transmission main and branches approximately 15 miles in length, located in the Midway field, and a lease to approximately eighty acres of land on which are located two wells, a pumping plant,

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tanks and other equipment. The land covered by the above lease belongs to the Pioneer Midway Oil Company. Under date of April 27, 1910, it was leased for a period of twenty years to July Consolidated Oil Company, who in turn assigned the lease on June 24, 1911, to Californian Amalgamated Oil Company, Limited. The latter company drilled an oil well on the property to a depth of 1,251 feet. No oil was struck and no further drilling for oil was done. A supply of water was developed, however, and the lessees drilled another well, expressly for water, nearby. With the securing of a supply of water the Californian company erected a pumping plant and tanks, laid mains and entered the field as a purveyor of water for boiler purposes. The pumping station has not been operated since October, 1914, owing to decreased consumption of water in the oil fields.

The lease to this property provides in part as follows:

> "The party of the second part agrees to take immediate possession of said land and to commence actual operations thereon of drilling a well on some portion of said land within a period of sixty days from the date hereof and to prosecute the drilling of said well in a reasonably diligent and business-like manner and continuously as is customary until said well has been drilled to a depth of 3,000 feet unless oil is discovered in paying quantities at a lesser depth. * * * The lessee further covenants and agrees that it will within sixty days, after the completion of the first well, begin the actual drilling of the second well on said premises, and will within the same period of time, after the completion of the second well, begin the drilling of a third well on said premises and will, within sixty days after the completion of said third well, and each succeeding well, thereafter, actually begin the drilling of additional wells until sixteen wells in all have been drilled on said premises."

It is further provided that if the lessee shall fail to do this work or shall under any circumstances suspend operations for a period of thirty days, the lease shall be forfeited and that all casing in wells, and all buildings, machinery, tanks and other improvements on the leased land shall become the property of the lessors.

In view of these provisions, and the fact that only two wells have been drilled upon the property, the title which Californian Amalgamated Oil Company proposes to pass to August Oil Company appears to be open to serious question.

The price which August Oil Company proposes to pay for these properties is fixed at $30,000.00 payable as follows:

> Five thousand dollars down;
>
> Nine thousand dollars by assignment of a certain contract, payable one-half in six months and one-half in twelve months;
>
> One thousand five hundred dollars in six months;
>
> One thousand five hundred dollars in twelve months;
>
> One thousand dollars per month after the expiration of twelve months until the entire amount of $30,000.00 is paid.

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Deferred payments are to bear interest at 6 per cent per annum and are to be evidenced by notes secured by mortgages upon the property of August Oil Company, including the property which it proposes to purchase. August Oil Company claims that the present value of the property it now owns is $216,536.00.

A valuation of the water utility properties of Californian Amalgamated Oil Company, Limited, made subsequent to the hearing by the Commission's engineers discloses the fact that the present value of the plant and wells is approximately $19,220.00 and of the pipe line approximately $15,500.00 or a total of $34,720.00. They report that the wells on the leased ground are badly in need of repair and can not be used until expensive overhauling has taken place. The boilers and pumps are also reported to be in bad condition.

Inasmuch as August Oil Company represents in its application

> "* * * that it has an abundance of water, and more than it can use in the territory over which its lands now extend, and also has sufficient equipment to handle both its own property and the property proposed to be bought from the Californian Amalgamated Oil Company, Limited,"

it is difficult to see wherein it will be greatly benefited by acquiring the pumping plant and wells of the Californian Amalgamated Oil Company, particularly when the validity of the lease on which this property stands is open to question.

In view of these facts I am of the opinion that before this application can be granted by this Commission it will be necessary for August Oil Company to make a further showing as to the manner in which the public interest will be served by the granting of this application. I accordingly submit the following form of order:

ORDER.

August Oil Company having applied to this Commission for authority to acquire certain water utility property and to issue notes and mortgage its property in payment therefor, and a public hearing having been held and it appearing to this Commission that for the reasons set out in the foregoing opinion said application should be dismissed without prejudice,

It is hereby ordered that the application herein be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of July, 1915.

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DECISION NO. 2562.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AUTHORITY TO ISSUE THREE-YEAR SIX PER CENT NOTES.

Application No. 1303.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF ONE HUNDRED ONE THOUSAND DOLLARS.

Application No. 1450.

Decided July 3, 1915.

Allen Chickering, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FOURTH SUPPLEMENTAL ORDER.

Whereas, this Commission in Decision No. 2551, dated June 30, 1915, permitted applicant to use $63,264.33 obtained from the sale of notes and bonds, heretofore authorized, to reimburse its treasury for expenditures because of additions and betterments to its plant during the first four months of 1915; and

Whereas, applicant reports that it has expended during the first four months of 1915, for additions and betterments to its plant, the total sum of $74,355.73; and,

Whereas, applicant reports that it has sufficient funds, obtained from the sale of notes and bonds heretofore authorized, on hand, to reimburse its treasury in an amount equal to the total expenditures for additions and betterments to its plant during the first four months of 1915; and,

Whereas, applicant requests authority to use for said purpose the sum of $11,091.40, in addition to the sum of $63,264.33 heretofore authorized; and,

Whereas, it appears that such expenditures are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Western States Gas and Electric Company be, and it is hereby given authority to use $11,091.40 heretofore authorized to be expended for additions and betterments, to reimburse its treasury because of expenditures during the first four months of 1915 for additions and betterments to its plant.

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The foregoing fourth supplemental order in these proceedings is hereby approved and ordered filed as the fourth supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of July, 1915.

DECISION No. 2563.

IN THE MATTER OF THE APPLICATION OF MAY I. MERRICK AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1754.

Decided July 3, 1915.

REPORT OF THE COMMISSION.

May I. Merrick having applied to this Commission for authority to convey to the board of public service commissioners of the city of Los Angeles a certain water system known as the South Park Water Company, which system supplies about 500 persons within the city of Los Angeles, in territory lying southerly of Florence avenue, westerly of South Park avenue, northerly of Manchester avenue and easterly of Main street in said city, in accordance with a deed, a copy of which is attached to the application herein as "Exhibit A," and describes the property to be transferred as follows:

(*a*) All water pipes, service connections and extensions constituting and pertaining to the water distributing system known as the "South Park Water Company," in said city of Los Angeles, owned, used and operated by said parties for supplying water in the territory lying southerly of Florence avenue, westerly of South Park avenue, northerly of Manchester avenue and easterly of Main street; together with all mains and connections of or pertaining to said water system in any of said bounding streets, or elsewhere in said city; excepting wells, machinery, buildings and tank, and the land whereon same are located.

(*b*) All franchises and rights of way owned or held by or for said first parties, and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works.

(*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers, property ratings, etc.,

and the board of public service commissioners of the city of Los Angeles having joined in the application, and it appearing that the application should be granted,

It is hereby ordered that the said application be, and the same is hereby, granted.

Dated at San Francisco, California, this 3d day of July, 1915.

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DECISION NO. 2564.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND ARIZONA RAILWAY COMPANY FOR PERMISSION TO SUSPEND TEMPORARILY THE OPERATION ON A PORTION OF ITS RAILROAD IN IMPERIAL COUNTY, CALIFORNIA.

Application No. 1751.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

San Diego and Arizona Railway Company, a corporation, having on June 28, 1915, filed with the Commission an application for permission to temporarily suspend operation on a portion of its line near Meyers Canyon during the construction of an undergrade crossing, and it appearing to the Commission that this is not a case in which a public hearing is necessary; that applicant has secured the consent of the interested parties for the temporary suspension of this operation, and that the temporary discontinuance of operation on this portion of applicant's line will not inconvenience the public; and it appearing that this application should be granted,

It is hereby ordered that San Diego and Arizona Railway Company be, and the same hereby is, granted permission to temporarily discontinue operation on its line near Meyers Canyon during the construction of an undergrade crossing.

The Commission reserves the right to make such further orders relative to this application as to it may seem right and proper, and to revoke the permission herein granted if in its opinion public convenience and necessity demand such action.

Dated at San Francisco, California, this 6th day of July, 1915.

DECISION NO. 2565.

RIVERSIDE PORTLAND CEMENT COMPANY

vs.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 539.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

Riverside, Rialto and Pacific Railroad Company having applied to this Commission for a rehearing in this matter, and it appearing to

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the Commission that there is no good cause why a rehearing should be had,

It is hereby ordered that said application be, and the same is hereby, denied.

Dated at San Francisco, California, this 6th day of July, 1915.

DECISION No. 2566.

BARCLAY McCOWAN ET AL.

vs.

WESTERN WATER COMPANY, DOMESTIC WATER COMPANY AND CONSUMERS WATER COMPANY.

Case No. 626.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this case being covered by the decision of this Commission No. 2546, made on June 30, 1915, in the Taft water cases,

It is hereby ordered that the complaint in this proceeding be, and is hereby, dismissed.

Dated at San Francisco, California, this 6th day of July, 1915.

DECISION No. 2567.

J. W. JAMESON ET AL.

vs.

DOMESTIC WATER COMPANY.

Case No. 650.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this case being covered by the decision of this Commission No. 2546, made on June 30, 1915, in the Taft water cases,

It is hereby ordered that the complaint in this proceeding be, and is hereby, dismissed.

Dated at San Francisco, California, this 6th day of July, 1915.

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DECISION NO. 2568.

J. WALTER KEY ET AL.

vs.

WESTERN WATER COMPANY AND CONSUMERS WATER COMPANY.

Case No. 749.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this case being covered by the decision of this Commission No. 2546, made on June 30, 1915, in the Taft water cases,

It is hereby ordered that the complaint in this proceeding be, and is hereby, dismissed.

Dated at San Francisco, California, this 6th day of July, 1915.

DECISION NO. 2569.

WM. NEVINS ET AL.

vs.

DOMESTIC WATER COMPANY.

Case No. 757.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this case being covered by the decision of this Commission No. 2546, made on June 30, 1915, in the Taft water cases,

It is hereby ordered that the complaint in this proceeding be, and is hereby, dismissed.

Dated at San Francisco, California, this 6th day of July, 1915

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DECISION No. 2570.

CITY OF ALBANY

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 816.

Decided July 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of the complaint in this proceeding being covered in Application No. 1740, being the application of the city of Albany to construct a widened highway over the tracks of the Santa Fe,

It is hereby ordered that the complaint in the above entitled proceeding be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 6th day of July, 1915.

DECISION No. 2571.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE PAYMENT OF ADDITIONAL INTEREST ON OUTSTANDING BONDS AND THE ISSUANCE OF CERTAIN ADDITIONAL BONDS.

Application No. 1516.

Decided July 7, 1915.

Applicant having heretofore been authorized to issue $1,582,000.00 face value of its 6 per cent bonds, portions of which were to be used to pay off certain 2-year collateral trust notes due August 1, 1915, applies for permission to issue $809,000.00 face value of notes to be issued towards retiring $954,000.00 face value of notes due August 1st and for permission to pledge such portions of the bonds as security therefor. Application granted, provided that bonds shall be pledged at the ratio of not to exceed $100.00 face value of bonds to $75.00 face value of notes.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

This Commission, on May 3, 1915, having issued its order (Decision No. 2335) in the above entitled matter, authorizing San Joaquin Light and Power Corporation, among other things, to issue and sell $1,582,000.00 of Series "C" 6 per cent forty-year first and refunding

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mortgage gold bonds; to sell $300,000.00 of said bonds at not less than 94 per cent of the face value thereof, and the remainder of said bonds at not less than 95 per cent of the face value of said bonds plus accrued interest thereon, and said order having provided that the proceeds derived from the sale of said bonds should be used, in part, to pay off applicant's two-year collateral trust notes, due August 1, 1915, in the sum of $954,000.00, and San Joaquin Light and Power Corporation having, on July 6, 1915, reported to this Commission that it had sold $300,000.00 of said bonds, and having requested authority to pledge a portion of the remainder of said bonds as collateral security for promissory notes not exceeding a total of $809,000.00, to be issued for the payment of its two-year collateral trust notes, due August 1, 1915, in the sum of $954,000.00, and good cause appearing,

It is hereby ordered that San Joaquin Light and Power Corporation be granted authority and it is hereby granted authority to pledge as collateral security $1,080,000.00 of its first and refunding mortgage forty-year Series "C" 6 per cent gold bonds, being a portion of the bonds heretofore authorized to be issued in Decision No. 2335 of this Commission, for an issue of promissory notes not exceeding a total of $809,000.00.

It is hereby further ordered that San Joaquin Light and Power Corporation be granted authority and it is hereby granted authority to issue its promissory notes in a total sum not to exceed $809,000.00, said notes to be secured by applicant's first mortgage forty-year Series "C" 6 per cent gold bonds in such ratio that the face value of the notes issued shall at no time be less than 75 per cent of the face value of the bonds pledged as collateral security therefor.

The authority herein given to pledge said bonds and to issue said notes is given upon the following conditions, not otherwise:

1. The notes herein authorized to be issued shall mature on or before two years from date of issue and shall bear a rate of interest which shall not exceed 8 per cent per annum.

2. The notes herein authorized to be issued shall be used toward the payment of applicant's two-year collateral trust notes, due August 1, 1915, in the sum of $954,000.00.

3. The authority herein granted to pledge said bonds and to issue said notes shall apply to such bonds as shall have been pledged, and to such notes as shall have been issued, on or before September 1, 1915.

4. The authority herein granted is conditioned upon the payment of the fee prescribed in section 57 of the Public Utilities Act, as amended.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of July, 1915.

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DECISION NO. 2572.

THOMAS MONAHAN, AS MAYOR OF THE CITY OF SAN JOSE

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 478.

Decided July 8, 1915.

Defendant at present has in effect in the city of San Jose a rate of $1.00 per 1,000 cubic feet for gas with a monthly minimum of 50 cents. This rate complainant attacks as unreasonable and exorbitant and petitions the Commission to fix just and reasonable rates and to compel defendant to extend its mains into certain of the sparsely settled sections of the city.

Held, After a valuation of defendant's plant and a review of its operating conditions at a rate of $1.00 for 1,000 cubic feet for first 5,000; 90 cents for second 5,000; 80 cents for next 10,000, and 70 cents for all over 20,000 cubic feet, with a monthly minimum of 50 cents established as a just and reasonable rate to become effective within twenty days. That the testimony offered as regards extensions of mains is not sufficient to warrant an order at present and as this matter is being considered in another action, complaint in this respect dismissed.

John W. Sullivan, for Complainant.

Chas. P. Cutten, for Defendant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is the complaint of Thomas Monahan, as mayor of the city of San Jose, against the Pacific Gas and Electric Company.

The complaint is directed against the price at which artificial gas is sold in the city of San Jose. The complaint alleges, in effect, that the present rates charged and collected by Pacific Gas and Electric Company for gas are excessive, unfair and unreasonable, and that said defendant company refuses to make reasonable extensions of its gas mains to supply residences and other inhabited buildings in said city. This Commission is asked to fix reasonable rates and charges, and to require defendant to extend its mains into those portions of the city which are now without gas service.

Defendant, in its answer, denies all of the material allegations of the complainant, and asks that the complaint be dismissed.

Defendant operates a low pressure gas distribution system, supplying San Jose, which is fed from a central generating plant. The mains are confined almost entirely to the corporate limits of the city. Certain thinly settled portions of the city are as yet unserved, and this complaint is in part based on defendant's refusal to extend thereto.

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The particular rates in effect in this territory which are attacked in this complaint are as follows:

PACIFIC GAS AND ELECTRIC COMPANY.

SAN JOSE DISTRICT.

Gas Rate.

Per 1,000 cubic feet.....$1 00
Minimum charge of 50 cents per month per meter.

At the hearing certain testimony was introduced by the city of San Jose bearing on the subject of defendant's policy in the matter of extending its gas mains, and certain specific instances were recited where applicants had failed to receive service.

An inventory and appraisal of defendant's gas plant and system at San Jose was prepared by the Commission's engineering department, which valuation report was presented at the hearing, together with statements and reports prepared on behalf of defendant and relating to its gas properties in San Jose, and testimony relating to the various reports and statements was given by the engineers of the Commission and engineers and representatives of defendant.

No books or other data bearing on the original cost of the plant to the defendant (Pacific Gas and Electric Company) or to its predecessors were introduced, and defendant testified that such were not available. One of defendant's engineers presented an exhibit purporting to show the cost of developing the business to its present condition. This was prepared on the so-called comparative plant method. As no attempt was made to identify any part of it with the financial history of the existing plant, and so many assumptions are involved, it may be considered purely hypothetical.

Defendant presented a statement of its gas capital in San Jose. This was based on a valuation prepared by J. G. White & Company as of December 31, 1911, adjusted for the book cost of subsequent additions and betterments.

A summary of this valuation, and that of the Commission's engineers follows:

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TABLE I.

PACIFIC GAS AND ELECTRIC COMPANY

(San Jose District).

STATEMENT OF CAPITAL.

Gas Department.

December 31, 1913.

Non-landed capital, City of San Jose.

Generating capital—	
1000—Works and station structures	$27,351 59
1001—General structures	692 50
1002—Steam producers and accessories	14,459 60
1003—Gas generators	24,706 00
1005—Steam and gas engines	1,897 47
1006—Purification apparatus	40,052 63
1007—Holders	74,039 00
1008—Accessory gas plant equipment	18,924 67
1009—Fuel oil tanks	13,482 00
1010—Station pipe lines	13,243 67
1011—Tools and appliances	411 19
1014—Furniture and fixtures	562 00
Generating capital	$229,822 32
Undistributed construction expenses	396 45
Total generating capital	$230,218 77
Transmission capital—	
1100—General structures	$964 00
1101—Boosting apparatus	7,999 04
1102—Trunk lines	728 26
1103—Regulators	1,551 00
Transmission capital	$11,242 30
Undistributed construction expenses	288 14
Total transmission capital	$11,530 44
Distribution capital—	
1201—Mains	$466,218 74
1202—Services	80,947 98
1205—Commercial arc lamps	11,376 55
1206—Gas meters	62,849 32
1207—Tools and appliances	1,106 16
1208—Horses, wagons and harness	1,365 00
1209—Autos, motorcycles and bicycles	25 15
1210—Furniture and fixtures	599 96
Distribution capital	$624,488 86
Undistributed construction expenses	2,089 73
Total distribution capital	$626,578 59
Gas department capital	$865,553 48
Undistributed construction expenses	2,774 32
Total gas department capital	$868,327 80
Proportion all department capital	$2,770 83
Undistributed construction expenses	27 61
Total proportion all department capital	$2,798 24
Total non-landed capital	$871,126 24

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Landed capital, City of San Jose.

Gas department	$37,250 00
Proportion all department	1,989 35
Total landed capital	$39,239 35
Total valuation (less working capital)	$910,365 59
Working capital—	
Materials and supplies	$10,567 45
Accounts receivable less consumer's advances	14,333 38
Cash	11,028 47
Total working capital	$35,929 30
Total valuation	$946,294 89

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TABLE II.

VALUATION OF C. R. C.

Engineering Department.

Account and Item	Estimated cost of reproduction	Amount of annual depreciation	Present value
Gas plant buildings and general structures—			
Brick buildings, corrugated roofs	$14,640 00	$488 00	$9,999 00
Corrugated iron and wooden buildings	2,139 00	86 00	1,241 00
Concrete meter house	3,137 00	78 00	2,980 00
Brick fence	1,972 00	66 00	1,576 00
Corrugated iron fence	680 00	57 00	388 00
Ground improvements	720 00	----------	720 00
Total gas plant buildings and general structures	$23,288 00	$775 00	$16,904 00
Gas holders	59,791 00	4,981 00	45,621 00
Furnaces, boilers and accessories	6,086 00	304 00	3,956 00
Gas generators	16,712 00	668 00	10,700 00
Steam engines	1,125 00	56 00	450 00
Purification apparatus—			
Wash boxes and scrubbers	9,841 00	328 00	7,217 00
Purifiers	12,758 00	319 00	10,844 00
Totals	$22,599 00	$647 00	$18,061 00
Miscellaneous gas plant equipment	2,165 00	108 00	1,515 00
Accessory equipment at works—			
Exhausters, boosters and governors	8,768 00	351 00	7,891 00
Lamp-black system	778 00	52 00	363 00
Wooden tanks	4,036 00	202 00	2,020 00
Steel tanks	7,645 00	191 00	6,689 00
Wells	1,719 00	34 00	1,616 00
Pumps	1,571 00	79 00	1,257 00
Cast iron gas piping	14,071 00	704 00	11,609 00
Miscellaneous piping, etc.	7,047 00	470 00	5,165 00
Totals	$45,635 00	$2,083 00	$36,610 00
Miscellaneous production equipment	2,262 00	151 00	1,810 00
Gas mains—			
Cast iron	230,835 00	4,617 00	198,518 00
Wrought iron	94,573 00	4,729 00	66,201 00
Valves	1,162 00	58 00	813 00
Trestles	904 00	60 00	723 00
Totals	$327,474 00	$9,464 00	$266,255 00
Gas services	76,016 00	5,067 00	50,672 00
Gas meters	56,050 00	3,733 00	37,329 00
Office furniture and fixtures	1,547 00	103 00	1,238 00
Stable and garage equipment—			
Automobiles	2,625 00	525 00	1,575 00
Wagons and harness	695 00	58 00	463 00
Horses	400 00	----------	400 00
Totals	$3,720 00	$583 00	$2,438 00
Tools and testing instruments	1,433 00	179 00	796 00
General structures	2,102 00	70 00	1,402 00
Sub-total valuation	$648,806 00	$28,972 00	$495,757 00
Engineering superintendence, etc.	64,801 00	----------	64,801 00
Contingencies	35,640 00	----------	35,640 00
Interest during construction	22,453 00	----------	22,453 00
Materials and supplies	13,703 00	----------	13,703 00
Working cash capital	22,591 00	----------	22,591 00
Land used for gas operations	24,299 00	----------	24,299 00
Total valuation	$831,492 00	$28,972 00	$679,244 00

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The valuation of the Commission's engineers, as set forth in Table II, does not include some items contained in defendant's statement of capital, notably, Proportion of All-Department Capital, both landed and non-landed, and Commercial Arc Lamps.

The values claimed by defendant exceed those shown in the appraisal prepared by the Commission's engineer in a number of instances, the principal items apparently being as follows:

Commercial arc lamps (excess)	$11,376 00
Gas plant equipment (excess)	17,999 00
Gas mains (excess)	47,434 00
Paving over mains (excess)	28,610 00
Land (excess)	14,940 00
Total excess	$120,359 00

On the other hand, the valuation submitted by the Commission's engineer exceeds that of defendant in a number of items, notably by approximately $14,000.00 on generating plant piping, and $3,000.00 on boosting apparatus, the net difference being $114,802.00.

Defendant's auditor testified in regard to the first item above that the arcs were rented to the consumer at the rate of 50 cents per month per lamp, and that the total rental in 1913 amounted to $3,470.20. It may be proper, inasmuch as the issue involved in this proceeding is the rate for manufactured gas, to exclude this property in an ascertainment of the cost of the above service, in which case, of course, the revenue derived from rental of lamps should not be included. Of course if defendant should incur a deficit in the general sale or rental of appliances to its consumers, this deficit might, under certain circumstances, be reasonably treated as part of the cost of obtaining new business. The case in point is, however, not of this nature, as any deficit which might result from these operations, if included in ratable capital, would be a concession to a particular class of consumers at the expense of the others. At this time I desire to call attention to the fact that defendant has not presented information regarding its general appliance business, which business should obviously be charged with a portion of the district operating and general office expenses.

The Commission's engineer testified that his unit prices on gas generating and purifying equipment were based, in part, on the actual cost of such work obtaining in Southern California, and defendant contends that in so deriving his unit costs he has not given proper consideration to higher costs of labor alleged to prevail in the northern part of the State. The evidence in this case does not justify the contention of defendant that there is any material difference either in the cost or efficiency of labor as between San Jose and Southern California, nor did defendant enlighten the Commission as to the actual cost to it of skilled and unskilled labor, or disclose the bases used by its engineers and the J. G. White Company in arriving at estimates covering the cost

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of labor. Under the circumstances, a mere assumption on the part of defendant that the Commission's engineer, in arriving at costs applicable to San Jose, used figures which were not representative of the true conditions existing in that city, can carry little weight in a determination of the issues involved. Inasmuch as the valuation of the Commission's engineer exceeds that of defendant by approximately $14,000.00 on the item of plant piping, it seems probable that much of the difference in the valuations of generating equipment might be attributed to a difference in segregation of pipe, rather than to an error in the cost of labor.

The largest difference occurs in the item of gas mains, as detailed heretofore.

The question of paving over mains, where the cost of such paving has not been incurred, has been discussed at length by this Commission in various other cases, and any further treatment of the matter at this time would be superfluous.

The proper allowance for overhead charges in connection with the construction of properties such as that under consideration, is almost entirely a matter of opinion, and little, if any, actual data has ever been presented to this Commission in support of the widely divergent views of the various engineers appearing before us. Under such circumstances the Commission must use its own judgment in the matter, based on any information which may be available.

Defendant introduced a statement setting forth the alleged actual cost of construction of 10,350 feet of main recently laid in San Jose. Applying unit costs of the Commission's engineer to this particular work, defendant obtained a result approximately 7 per cent less than what is claimed to be the actual cost, from which it concludes that his unit prices on mains are uniformly low by this percentage. I am not impressed with this contention of defendant, particularly since its district superintendent stated that this main is a belt feeder line which was tied in with all the distribution mains which it crosses, and hence not typical of the entire distribution system. The Commission's engineer testified that his prices of material were taken from the records of defendant's purchasing department wherever obtainable; that labor costs were estimated and checked against actual costs with which they agreed quite closely in most cases. In view of this testimony, lack of agreement in one isolated piece of construction is hardly sufficient ground for the conclusion that the unit prices are invariably wrong.

The land expert of this Commission placed a value of $22,134.00 upon the real estate occupied by defendant's gas plant, which figure was based on an appraisement submitted to him by the realty board of San Jose. Their figure, $21,080.00, amounts to 25 cents per square foot of area, to which was added 5 per cent as the cost of securing the

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land. Defendant claims the value of $37,250.00, or 44.1 cents per square foot.

Mr. T. C. Barnett, a real estate dealer of San Jose, called as a witness for defendant, appraised this property at $34,300.00, or 40 cents per square foot. On account of the effect of recent large purchases by the Southern Pacific Company in securing a right of way in this vicinity, which would tend generally to inflate values, and the selling of a large lot at a price alleged to be below its real value, the determination of the true value of defendant's real estate is extremely problematical, and a wide variation in the opinion of the experts is to be expected. Counsel for complainant stated his willingness to accept the judgment of Mr. Barnett as to the value of this land, but of course such a stipulation is not necessarily binding upon this Commission in a determination of its value.

Defendant introduced a statement of the operating expenses of its gas department in San Jose for the year 1913, as set forth in Table III below.

TABLE III.

PACIFIC GAS AND ELECTRIC COMPANY.

(San Jose.)

STATEMENT OF EXPENSES.

Gas Department.

Year 1913.

Costs—expenses:	
1. Maintenance of generating capital—	
A—Works and station structures	$66 05
B—General structures	16 56
C—Steam producers and accessories	1,878 57
D—Gas generators	1,888 44
E—Steam and gas engines	39 81
F—Purification apparatus	260 79
G—Holders	44 42
H—Accessory gas plant equipment	703 35
I—Fuel oil tanks	5 61
J—Station pipe lines	14 98
K—Tools and appliances	106 23
Total maintenance of generating capital	$5,024 81
2. Maintenance of transmission capital—	
A—Boosting apparatus	$45 23
B—Horses, wagons and harness	25
Total maintenance of transmission capital	$45 48
3. Maintenance of distribution capital—	
A—General structures	
B—Mains	$1,246 12
C—Services	470 81
D—Commercial arc lamps	4 86
E—Gas meters	1,636 85
F—Tools and appliances	307 50
G—Horses, wagons and harness	315 55
H—Autos, motorcycles and bicycles	677 97
I—Furniture and fixtures	14 58
Total maintenance of distribution capital	$4,674 24

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4. Generating expenses—	
A—Steam plant	$5,813 21
B—Generating plant	5,698 75
C—Purification plant	1,146 84
D—Fuel oil for steam	222 56
E—Fuel oil for gas	46,713 17
F—Lampblack expense for steam	3,435 19
G—Lampblack expense for gas	*16 05*
H—Lampblack expense removing	1,413 45
I—General labor and supplies	4,675 96
J—Superintendence	2,113 60
K—Office salaries	189 40
L—Office expense	20 75
Total generating expenses	$71,421 83
5. Transmission expenses—	
A—Boosting apparatus	$50 40
Total transmission expenses	$50 40
6. Distribution expenses—	
A—Sets and outs	$2,356 82
B—Complaints	2,525 56
C—Inspectors	3 04
D—Statements	1,139 98
E—Collectors	1,774 39
F—Trimming commercial arc lamps	2,712 67
G—Gratuitous service	122 26
H—Free lamp renewals	26 26
I—New business expense	3,150 23
J—Superintendence	1,806 15
K—Office salaries	6,948 15
L—Office expense	2,463 40
M—Stable expense	1,535 91
N—Auto expense	87 76
O—General labor and supplies	518 84
P—Sundry expense	395 41
Q—Warehouse expense	142 20
Total distribution expenses	$27,709 03
7. Miscellaneous—	
A—Taxes	$9,238 61
B—Floating debt interest	3,225 26
C—Uncollectible accounts	671 67
D—Administrative expenses	13,482 95
Total expenses	$135,544 28
8. Reserves—	
A—Fire insurance	$1,912 95
B—Casualty insurance	1,868 69
C—Annual amortization of depreciable capital:	
(a) Depreciation	28,932 58
(b) Obsolescence inadequacy	
(c) Contingencies, etc.	12,859 73
Total reserves	$45,573 95
Total costs	$181,118 23

Expense items 1, 2, 3, 4, 5 and 6 in Table III are taken directly from defendant's books, except that certain office and other general expenses have been prorated between Los Gatos and San Jose, and between the gas and electric departments in San Jose. These have been analyzed

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and accepted as reasonable and proper in the determination of the cost of this service.

Expenses included in item 7 are obtained by an arbitrary apportionment upon various bases of the entire amount of such expenditures made by defendant over its system.

Account 7*a* represents a gross revenue prorata of the taxes paid during 1913 for the year previous. In determining the proper amount for this item, in arriving at the cost of service, the proper percentage has been applied to the sum of all other costs.

Account 7*b* is covered by the return allowed defendant on its property, including working cash capital, and is not properly an item of expense.

Account 7*d* is a pro rata of general system administrative expense upon a basis differing from that heretofore used by this Commission in determining the cost of service from defendant's system.

The figures shown under item 8 do not reflect any charges as set up on defendant's books, but are rather defendant's estimate of the annual amount which it should be allowed to earn to create the various reserves as set forth in Table III.

Defendant carries its own fire and casualty insurance, but no attempt was made to show the relation of these estimates to the actual losses annually incurred from fire and accident, either in defendant's San Jose district or over its entire system. Apparently the estimate for casualty insurance has been derived by application to defendant's pay roll of the rates quoted by the State Compensation Insurance Fund, but there is nothing in the record to indicate that these same rates will apply in the future, nor that defendant would have to pay these rates if it were actually in the market for casualty insurance.

After a careful consideration of all the evidence, I find that the following rates are just and reasonable, and that they will result in a net return of not less than eight (8) per cent on a fair value of defendant's gas plant and system in San Jose and vicinity, and that they will be at least sufficient to provide for such extensions and improvements to said system as may be necessary to adequately and properly serve the city of San Jose and vicinity.

TABLE IV.

SCHEDULE "A."

Rate for Artificial Gas.

Applicable to all classes of consumers.

$1 00 for the first 5,000 cubic feet of gas used per month.
90 for the second 5,000 cubic feet of gas used per month.
80 for the next 10,000 cubic feet of gas used per month.
70 for all over 20,000 cubic feet of gas used per month.

Minimum charge 50 cents per month per meter.

This rate contemplates the service of manufactured oil gas of an average heating value not less than 600 British thermal units per cubic foot.

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While it would seem that a more liberal policy on the part of defendant in regard to service extensions might well have been followed, the evidence does not warrant an order at this time covering specific cases. The general problem of service extensions is being considered by the Commission in another proceeding, and because of this fact, and the insufficiency of the evidence in this case, I must recommend that the complaint as to extensions be dismissed.

I recommend the following form of order:

ORDER.

Public hearings having been held in the above entitled proceeding, and the case having been submitted and being now ready for decision, the Railroad Commission hereby finds as a fact that the rates charged by Pacific Gas and Electric Company for artificial gas in the city of San Jose and vicinity are unjust and unreasonable in so far as they differ from the rates herein established, and that the rates herein established are fair and reasonable.

Basing its order on the foregoing finding of fact, and on the further findings contained in the opinion preceding this order,

It is hereby ordered that Pacific Gas and Electric Company establish and file with this Commission within twenty (20) days from the date of this order, and thereafter charge and collect for gas service supplied by it in the city of San Jose and vicinity the following rates:

SCHEDULE "A."

Rate for Artificial Gas.

Applicable to all classes of consumers.

$1 00 for the first 5,000 cubic feet of gas used per month.
90 for the second 5,000 cubic feet of gas used per month.
80 for the next 10,000 cubic feet of gas used per month.
70 for all over 20,000 cubic feet of gas used per month.

Minimum charge 50 cents per month per meter.

This rate contemplates the service of manufactured oil gas of an average heating value not less than 600 British thermal units per cubic foot.

Except as to those matters specifically covered in the foregoing order, the complaint is dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

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DECISION NO. 2573.

L. H. WRIGHT

vs.

J. B. VAN NUYS, ANNIS H. VAN NUYS SCHEPPE, AND KATE VAN NUYS PAGE.

Case No. 803.

Decided July 8, 1915.

Complainant petitions the Commission to compel defendants, operating a water utility, to serve him with water for irrigation purposes, claiming that they now have a four-inch main along the street in front of his property with a connection running to the property line. Defendants in their refusal to deliver water for irrigation purposes contend among other things that their supply is limited, that complainant resides out of the district that they hold themselves out as serving and that the main running to his property does not belong to them.

Held, That complainant does reside within the district served by defendant, also that the pipe running to his property is now and has been used by defendant and to all appearances defendant will continue using same, also that it has sufficient water for all present requirements and it is accordingly directed to extend the service petitioned for.

L. H. Wright, in propria persona.

O'Melveny, Stevens & Millikin, for defendants.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Complainant in this proceeding asks the Railroad Commission to make an order directing defendants to supply water to complainant for the irrigation of lands in the vicinity of San Gabriel, Los Angeles County.

The complaint alleges in effect that J. B. Van Nuys, Annis H. Van Nuys Scheppe and Kate Van Nuys Page, hereinafter referred to as defendants, are engaged in the business of selling and distributing water for domestic and irrigation purposes in and in the vicinity of San Gabriel, Los Angeles County; that L. H. Wright, the complainant herein, is the owner of five acres of land fronting on the San Gabriel boulevard and 80 rods south of the intersection of San Bernardino road and San Gabriel boulevard, Los Angeles County; that said five acres can be irrigated from the system of defendants and is at present under cultivation; that complainant has demanded and sought to purchase water, from defendants, at their regular rates, but that defendants have consistently refused to sell or furnish any water for the irrigation of said land, although the property is under cultivation and in need of irrigation; that water has been furnished from a neighbor's well, which

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supply is or is about to be discontinued and that defendants' system is the only other source of water supply available; that defendants are owners of a 4-inch pipe line which extends along San Gabriel boulevard in front of said five acres of land; that there is a 2-inch connection at present from said main to said land; that said land has been served with water for irrigation during a part of the ten years last past.

The answer to the complaint alleges and denies in effect, as follows: Denies that public convenience and necessity require the service by defendants of said property with irrigating water; denies that complainant has been served with water for irrigation of said land during the ten years last past; denies that no other source of supply is available to complainant; denies ownership of said 4-inch pipe line; alleges that water for domestic use is delivered to complainant and others at the point of beginning of such 4-inch pipe line; alleges that defendants have reached the limit of their capacity to supply water for irrigating use; and alleges that complainant is not within the district served by them with water for irrigation purposes.

Public hearing in this application was held at Los Angeles on June 9, 1915.

The evidence shows that complainant is the owner of a five-acre tract fronting on the San Gabriel boulevard, the north line of which is 80 rods south of the intersection of San Gabriel boulevard and San Bernardino road, Los Angeles County. Demand for water to irrigate said five acres was made by complainant and refused by defendants.

Defendants have presented three main issued herein, as follows:

1. That complainant is without the district served by defendants with water for irrigation;

2. That the limit of defendants' water supply has been reached;

3. That the demand for water for domestic use in the future will increase to such an extent that the present supply should be conserved for this purpose.

I will consider these issues in turn.

1. That complainant is without the district served by defendants with water for irrigation.

Complainant is served at present with domestic water from a 4-inch pipe line which was constructed by a mutual company. This mutual company abandoned its system, and the 4-inch line in question has since been used by defendants for the delivery of water for at least the five years last past. This pipe line is connected with the system of defendants at a point on the San Gabriel boulevard 80 rods north of the intersection of San Gabriel boulevard and San Bernardino road, at which point defendants maintain they deliver water to complainant and some fourteen others served by said pipe line.

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Evidence was submitted in regard to the ownership of this pipe but I am of the opinion that it is immaterial whether title rests in complainant and others, or in defendants, as far as this proceeding is concerned.

On defendants' own showing the boundary of their district for irrigation service is at the point of beginning of the 4-inch pipe line and defendants also contend that water is delivered by them only to the point of beginning of this pipe line. Complainant maintains that water is delivered to the property line of his land.

Defendants have never declared, until in this proceeding, what they regarded as the area within which they desired to serve and moreover, at present and for some time past, a Mrs. Marshall has been served with water for irrigation in the district to which they now refuse to extend service.

Whether or no the title to the pipe line rests with the defendants I am of the opinion that complainant is within the district properly to be served with water for irrigation. If title rests with complainant and others, water for irrigation will necessarily be delivered at a point which is within the district which defendants maintain as the district served by them. On the other hand, defendants are at present serving water for domestic use through the disputed main; are serving one consumer with water for irrigation use and have until this time never publicly declared the boundary of the district served by their system. So if title rests with defendants the fact remains that public convenience and necessity require that complainant be served.

I find as a fact that the five acres of land, which complainant asks be served with water for irrigation, is within the district properly to be served by defendants.

2. As to whether the limit of defendants' water supply has been reached:

J. B. Van Nuys, in his testimony, states that at present, during the season of maximum demand, there exists a shortage of water for the present consumers and that defendants have drilled a well which has proved to be a failure. This well was drilled between the two wells at present in operation and so came within the zone from which these wells draw. The water supply of this system is extracted by wells from behind what is commonly known as the Raymond Hill dike which intercepts the underflow and forms a natural reservoir. All data available from researches of the supply of water in the vicinity of Raymond Hill dike shows that the supply of water available is greater than the extractions at this time, therefore the fact that one well was a failure is not conclusive evidence that others, if drilled at some point more distant from the present wells, will not be successful in obtaining an additional supply of water.

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Mr. Van Nuys testified further that a water supply is obtainable by sinking wells in practically any locality in the vicinity of San Gabriel.

The Commission's hydraulic engineers also testified that, judging from the result of investigations in the vicinity of San Gabriel in evidence in other proceedings before this Commission, an additional source of water supply can be obtained, either in the area behind the Raymond Hill dike or in the vicinity of San Gabriel. Defendants claim the right to develop an additional supply in either locality mentioned above, and after considering the evidence I discover no reason why such supply can not be developed, and I find as a fact that the defendants' sources of supply of water are adequate and sufficient to furnish water for irrigation to complainant.

3. As to whether the demand for water for domestic use in the future will increase to such an extent that the present supply should be conserved for this future use.

Evidence was submitted at the hearing alleging that defendants will require a large quantity of water in addition to the present supply to take care of the increased demand for water to supply the city of San Gabriel in the future.

The city of San Gabriel is at present approximately one-quarter developed and there has been an increase of about 75 service contions per year. Defendants contend that additional demand for water for irrigation should be refused so that the supply for the future domestic use will be conserved.

It appears that attempting to conserve a supply for future domestic use, especially where the amount of such increased use is conjectural and an additional supply can in all probabilities be developed, is depriving consumers, rightfully entitled to water at present, of their just dues, and particularly so in this instance.

If the question arises in the future of water being taken for a higher use than irrigation, the Commission can at that time take the matter under advisement but at present I am of the opinion that it is false economy to conserve water for the future and thus prevent the water being put to a beneficial use at present.

I recommend that defendants be ordered to serve complainant with water for the irrigation of said five acres of land but also recommend that, as the present irrigation season is well advanced, complainant exercise every effort to obtain a supply for the present season from his neighbor, and that defendants be ordered to supply any water available above the use of present consumers during 1915—defendants to construct wells or other sources of supply before the commencement of the 1916 irrigation season and to furnish complainant with water for irrigation during 1916 and thereafter.

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I submit herewith the following form of order:

ORDER.

This case being at issue upon complaint and answer and a public hearing having been held, and the case submitted and being now ready for decision,

It is hereby ordered that J. B. Van Nuys, Annis H. Van Nuys Scheppe, and Kate Van Nuys Page supply, during the irrigation season of 1915, all surplus water available over and above water required for present consumers up to the amount necessary to irrigate the five acres of land located on San Gabriel boulevard 80 rods south of the intersection of San Bernardino road and San Gabriel boulevard, and owned by L. H. Wright.

It is further ordered that J. B. Van Nuys, Annis H. Van Nuys Scheppe and Kate Van Nuys Page, from the beginning of the 1916 irrigation season, supply and continue to supply water at the regular rates for water for irrigation use, now or hereafter in effect for the irrigation of aforesaid five acres of land.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

Decision No. 2574.

IN THE MATTER OF THE RATE FOR ELECTRIC POWER SUPPLIED BY UNITED LIGHT AND POWER COMPANY TO SAN FRANCISCO, OAKLAND AND SAN JOSE CONSOLIDATED RAILWAY AND SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 779.

Decided July 8, 1915.

San Francisco, Oakland and San Jose Consolidated Railways, subsequently consolidated into the San Francisco-Oakland Terminal Railways, and the United Light and Power Company, whose properties have recently been transferred to the Consolidated Power Company, being at one time in control of the same officials, the railway company leased its power plant to the power company and entered into an agreement to purchase power from the power company at the rate of $0.01125 per kilowatt hour. This rate the Commission deemed unreasonably high and instituted an investigation into the conditions surrounding the execution of the agreement establishing same, in the preliminary order in which respondents were directed to reach an agreement on a new rate based on a more equitable basis.

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Respondents now file an agreement establishing a rate of $0.0095 per kilowatt hour which agreement is approved and ordered effective on and after August 1, 1915.

Morrison, Dunne & Brobeck, by *W. L. Brobeck*, for San Francisco, Oakland and San Jose Consolidated Railway and San Francisco-Oakland Terminal Railways.

R. P. Henshall, for United Light and Power Company.

REPORT OF THE COMMISSION.

This is a proceeding instituted by the Railroad Commission on its own motion, on February 13, 1915, to investigate the reasonableness of the rate for electric energy supplied to San Francisco-Oakland Terminal Railways by United Light and Power Company, and to fix a just and reasonable rate for this service. Thereafter, on February 16, 1915, United Light and Power Company, together with certain other parties, filed with this Commission Application No. 1542, which application sought the authority of the Commission for a comprehensive plan of reorganization of United Light and Power Company and its subsidiary companies. In this application United Light and Power Company asked, among other things, that the Commission authorize United Light and Power Company to sell, transfer and convey all of its property to one E. W. Wilson who, in turn, is to sell, transfer and convey the property thus acquired to Consolidated Electric Company, which company was organized by Great Western Power Company for the purpose of acquiring the property of the United Light and Power Company. In other words, this application contemplated that Consolidated Electric Company shall become the successor in interest to all the property of United Light and Power Company. The plan of reorganization outlined in said application also specifically contemplates that the new company, *i. e.*, Consolidated Electric Company, shall take over from United Light and Power Company, and assume the obligation of said company to serve electric energy to San Francisco-Oakland Terminal Railways, the reasonableness of the rate for which service is the subject of the present proceeding. After hearing, Application No. 1542 was granted by the Commission with certain modifications, and United Light and Power Company was authorized to sell, transfer and convey its entire property, through the medium of one E. W. Wilson, to Consolidated Electric Company, as requested in the application.

In the meantime, a hearing was had in the present proceeding and evidence was introduced upon the question of the reasonableness of the rate of $0.01125 per kilowatt hour for electric energy supplied to San Francisco-Oakland Terminal Railways by United Light and Power Company. Thereafter, *i. e.*, on May 10, 1915, the same date upon which the

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Commission made its order granting the application above mentioned, the Commission made a preliminary order in the present proceeding. In this preliminary order the Commission reviewed the evidence introduced at the hearing and made a finding that the rate of $0.01125 per kilowatt hour is unreasonably high. The Commission did not, however, in that preliminary order alter the existing rate of $0.01125, or prescribe any new rate to be charged for this service, but in view of the application above mentioned, and in view of the negotiations then under way with reference to the transfer of the property of United Light and Power Company to Consolidated Electric Company and the assumption by the latter company of the obligation to supply electric energy to San Francisco-Oakland Terminal Railways, the Commission made a preliminary order merely, directing "that San Francisco-Oakland Terminal Railways and United Light and Power Company (of California), or its successors in interest, immediately take up the question of an agreement upon a new, just and equitable rate to be paid for electric energy supplied by United Light and Power Company (of California), or its successors in interest, to San Francisco-Oakland Terminal Railways, and that said companies report to this Commission on or before May 20, 1915, their conclusions with a copy of such new contract, if any, as they may have executed in the premises, subject to the Railroad Commission's approval. Such supplemental order as may seem appropriate will then be made." On May 20, 1915, report was made to the Commission that, while no agreement had been reached as to a new rate, San Francisco-Oakland Terminal Railways and Consolidated Electric Company—the company to which United Light and Power Company had sought and had obtained authority to transfer its property, were negotiating with reference to a new rate. Although the order of the Commission made in this proceeding on May 10, 1915, was merely preliminary, and in no way altered the rate to be charged for the service of electric energy by United Light and Power Company to San Francisco-Oakland Terminal Railways, United Light and Power Company, on May 19, 1915, filed with the Commission an application for rehearing. This application for rehearing was denied by the Commission on May 21, 1915, the Commission stating that "The Commission entertained the hope that San Francisco-Oakland Terminal Railways and Great Western Power Company, which company under the Commission's authorization heretofore given, is to take over the property of United Light and Power Company (of California), through the instrumentality of a subsidiary corporation, would be able to agree upon a just and reasonable rate, which might then be filed with the Commission as representing their views of the rate which should be established."

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This proceeding is now ready for final decision. The orders so far made on May 10, 1915, and on May 21, 1915, were merely preliminary. Those orders did not alter the rate then in effect for the supply of electric energy to San Francisco-Oakland Terminal Railways. The rate of $0.01125 already in effect obviously remains in effect until reduced by the voluntary agreement of the parties or altered by the order of the Commission, prescribing a different rate. The orders so far made merely directed the parties in interest to negotiate with reference to an agreement upon a new rate. This was done, and there has been a full compliance in every particular with the orders of the Commission so far made in this proceeding, and the effectiveness of those orders is now entirely spent. In fact, the question of the proper rate to charge for the supply of electric energy to San Francisco-Oakland Terminal Railways has been agreed upon in the very manner contemplated in the Commission's orders. Consolidated Electric Company, which company was organized to take over the property of United Light and Power Company, and San Francisco-Oakland Terminal Railways, on July 1, 1915, filed with this Commission a rate of $0.0095 per kilowatt hour to be charged for electric energy supplied to San Francisco-Oakland Terminal Railways on and after August 1, 1915. This agreement upon a new rate makes unnecessary any order of the Commission fixing a new rate to be charged for electric energy supplied by United Light and Power Company to San Francisco-Oakland Terminal Railways different from the rate now in effect. United Light and Power Company has sought and obtained authority to transfer its entire property, through the medium of one E. W. Wilson, to Consolidated Electric Company. That company has agreed with San Francisco-Oakland Terminal Railways upon a new rate to be charged for electric energy to be supplied to the railway company. Only in the event that the reorganization plans, whereby Consolidated Electric Company will acquire all the properties of United Light and Power Company, are not finally consummated, will it become necessary to make any further order in this proceeding. If the reorganization plans, which are the subject of Application No. 1542, and which have already been approved by the Commission with certain modifications, are not carried out, the parties will be expected to notify the Commission so that such proper supplemental order as is necessary may be made in the present proceeding. Under the facts set forth herein, however, all that is at present necessary to close this proceeding is for the Commission to approve the rate voluntarily agreed upon by Consolidated Electric Company and San Francisco-Oakland Terminal Railways.

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ORDER.

This proceeding having been regularly heard and being now ready for final decision, and it appearing that Consolidated Electric Company and San Francisco-Oakland Terminal Railways have voluntarily agreed upon a rate of $0.0095 per kilowatt hour for electric energy to be supplied by Consolidated Electric Company to San Francisco-Oakland Terminal Railways, said rate to become effective on and after August 1, 1915,

It is hereby ordered that said rate of $0.0095 per kilowatt hour be, and the same is hereby approved and ordered filed as the rate to be charged by consolidated Electric Company for electric energy supplied to said San Francisco-Oakland Terminal Railways on and after August 1, 1915.

Dated at San Francisco, California, this 8th day of July, 1915.

DECISION NO. 2575.

JAMES Q. PRENTICE

vs.

LOS ANGELES GAS AND ELECTRIC CORPORATION.

Case No. 811.

Decided July 8, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

James Q. Prentice, complainant, having on July 2, 1915, made written request to this Commission that this proceeding be dismissed,

It is hereby ordered that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 8th day of July, 1915.

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DECISION NO. 2576.

GEO. E. SMALL ET AL.

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 808.

Decided July 8, 1915.

Complainants having for a short time received service through the Porterville exchange of defendant telephone company and now connected with the Terra Bella exchange, petition the Commission to compel the telephone company to reconnect them with the Porterville system. Defendant contends that complainants misrepresented their location, that they properly reside within the Terra Bella area and should be connected with the latter named exchange.

Held. That the Commission authorized defendant company to install an exchange at Terra Bella for the purpose of serving patrons within that area excepting several who were at the time connected with the Porterville exchange. That complainants herein were connected subsequent to the date of this order and as they reside within the Terra Bella exchange area should properly receive service therefrom. Complaint dismissed.

Geo. E. Small, in propria persona.

Jas. T. Shaw, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is a complaint brought by Geo. E. Small and five other parties who are residents of a certain section of Tulare County, California, situated between the town of Terra Bella and the city of Porterville, versus The Pacific Telephone and Telegraph Company, alleging that the defendant company has, without due authority, denied them the right of telephone service through direct connection with the defendant's local telephone exchange located in Porterville, and asking that the Commission require the defendant to restore service through the connection at Porterville of a line over which they formerly had this service.

The defendant company has filed a formal answer to the complaint in which, among other things, it alleges that the complainants are within the exchange area of Terra Bella at which it has established a telephone exchange under authority conferred by this Commission, and that it is ready and willing to serve the defendants with telephone service at Terra Bella at rates on file with the Commission and in effect at that point. It is further alleged that the temporary service which these complainants had out of the Porterville exchange

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was obtained through certain misrepresentations which were made with reference to their location.

The case was heard in Porterville on June 19th. Testimony was introduced to show that on or about February 10, 1915, the complainants purchased a portion of a line from other parties which formerly had been connected at Porterville with the defendant's exchange and at Ducor with an exchange which is owned by the Ducor-California Hot Springs Telephone Company, the portion of the line purchased being that end of it which was connected at Porterville. It was also shown that, prior to this purchase and until they connected telephones with the line thus acquired, the complainants have all been without telephone service at either of these points, and the defendant company has taken the position that it was only by reason of the fact that their several locations were represented to be within the Porterville exchange area that Porterville service was temporarily obtained. The complainants deny that misrepresentation was made and claim that they would not have purchased this line had they known that there would be any question as to their right to use it to obtain connection at Porterville, and that, having purchased it in good faith, they should have the desired service as otherwise their investment would represent a loss. Since the testimony of the various witnesses is contradictory in this particular respect, the question of deciding this point would resolve itself into one of determining the integrity of the witnesses. The merits of the case, however, do not hinge upon this point.

Upon the formal application of this defendant and others, and after a formal hearing by this Commission, an order was issued in January, 1914, permitting the defendant to establish an exchange at Terra Bella under certain specified conditions, and recognizing in effect the defendant's right to serve all of its patrons within certain territory, excepting certain parties who were at that time served from Porterville, from the exchange which it was authorized to establish at Terra Bella. If these complainants are located within the recognized Terra Bella exchange area, and if they are new patrons without a prior claim to Porterville service, the Commission can not grant that they now have such claim regardless of their present ownership of this line or of the circumstances which may have prompted its purchase.

The testimony shows, and the fact is admitted, that they are located within this territory. It shows further that their line was acquired after the exchange was established at Terra Bella, and that, prior to its purchase, they were not patrons of the defendant and were without telephone service at their several locations. Furthermore, it is admitted that their objection to being connected at Terra Bella is

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principally due to the necessity of paying toll charges for talking between that point and Porterville.

In view of these facts, the following order is submitted:

ORDER.

Complaint having been made to this Commission by George E. Small et al., complainants, residents of a certain territory situated between the city of Porterville and the town of Terra Bella, in Tulare County, California, versus The Pacific Telephone and Telegraph Company, defendant, alleging that defendant, The Pacific Telephone and Telegraph Company, has disconnected from its Porterville exchange a certain telephone line over which direct telephone service at Porterville has been heretofore furnished the complainants, and asking that said defendant be required to restore said connection and said telephone service, and a hearing having been had, and the Commission being fully apprised in the matter, this Commission hereby finds as a fact:

1. That the said complainants, George E. Small et al., are located within territory which is properly tributary to defendant's Terra Bella exchange;

2. That the said complainants have no rightful present claim to exchange telephone service except through the defendant's Terra Bella exchange.

And basing its conclusions on the foregoing findings of fact,

It is hereby ordered that the complaint herein be and it is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

DECISION NO. 2577.

IN THE MATTER OF THE APPLICATION OF THE CAMPBELL WATER COMPANY FOR PERMISSION TO ISSUE STOCK.

Application No. 1732.

Decided July 8, 1915.

Applicant having a note outstanding in the sum of $800.00 and having made certain capital expenditures from income, applies for and is granted permission to issue 40 shares of its capital stock of the par value of $25.00 to be sold at not less than par, proceeds to be used to retire note, the balance to reimburse treasury.

E. R. Kennedy, for Applicant.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of The Campbell Water Company, operating in the town of Campbell, Santa Clara County, for authority to issue forty shares of stock of the par value of $25.00 per share.

The Campbell Water Company was organized in December, 1913, to supply water for irrigation and domestic purposes to the inhabitants of Campbell and vicinity.

Under an order of the Commission, dated May 5, 1914, it acquired the properties of Campbell Water Company.

Applicant has an authorized stock issue of 1,000 shares of the par value of $25.00 per share, of which 480 shares are now outstanding. It has issued no bonds and has no indebtedness other than a demand note for $800.00 dated October 16, 1914, payable to R. K. Thomas, and bearing interest at the rate of 7 per cent per annum. The proceeds from this note were applied toward the refunding of two notes in the total sum of $1,200.00, payable to the Bank of Campbell, and dated December 31, 1913.

The proceeds from these two notes were applied to additions and betterments to the company's system.

Annual reports of The Campbell Water Company, and its predecessor, show earnings for the past three years as follows:

	December 31, 1912	December 31, 1913	December 31, 1914
Operating revenues	$4,277 68	$5,832 80	$3,669 28
Operating expenses	3,718 11	3,895 94	2,853 23
Net operating revenue	$559 57	$1,936 86	$816 05

The company in its application states that dividends have been paid as follows:

1910—6 per cent on capital stock of par value of $5,525.00 or $331.50.
1911—None.
1912—None.
1913—25 per cent on capital stock of par value of $6,000.00 or $1,500.00.
1914—6 per cent on capital stock of par value of $12,000.00 or $720.00.

At the hearing of Application No. 1065, decided May 5, 1914, the Commission's engineers estimated the value of this property to be approximately $13,500.00. Since April 5, 1914, and prior to January 1, 1915, the company states that it has laid pipe, installed meters and made other additions to its system in the sum of $1,109.17.

Applicant accordingly wishes to issue $1,000.00 of stock and use the proceeds in paying the $800.00 note above mentioned and to use the balance in reimbursing its treasury for expenditures from surplus.

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After a consideration of the evidence submitted by The Campbell Water Company, I am of the opinion that its application is proper and should be granted, and I accordingly recommend the following form of order:

ORDER.

The Campbell Water having applied to this Commission for authority to issue 40 shares of stock of the par value of $25.00 per share;

And a hearing having been held, and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which said stock are to be issued are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that The Campbell Water Company be, and it is hereby, authorized to issue and sell 40 shares of stock of the par value of $25.00 per share, the proceeds to be used in retiring a note in the sum of $800.00, payable to R. K. Thomas, and dated October 16, 1914, and in reimbursing the company's treasury for the sum of $200.00 expended for additions and betterments.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The Campbell Water Company shall sell the stock herein authorized to be issued at not less than its par value of $25.00 per share;

(2) Within thirty days after the note to R. K. Thomas in the sum of $800.00 has been retired, applicant shall make report of such fact to this Commission.

(3) The authority herein granted to issue stock shall apply only to such stock as shall have been issued by The Campbell Water Company on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

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DECISION NO. 2578.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR AN ORDER AUTHORIZING THE PLEDGING OF GOLD NOTES AND FOR PAYMENT OF INDEBTEDNESS.

Application No. 1598.

Decided July 8, 1915.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

This Commission having issued its order in the above entitled matter on April 1, 1915 (Decision No. 2271), and said order having authorized Southern Counties Gas Company to use the proceeds from the sale of $150,000.00 of its three year 6 per cent gold notes for the purpose of paying notes and accounts payable as specified in said order;

And the applicant now having asked this Commission to modify said order to the end that it be authorized to use a part of the proceeds derived from the sale of said $150,000.00 of its three year 6 per cent gold notes for the purpose of acquiring $20,000.00 par value of its first mortgage bonds for sinking fund purposes, and good cause appearing,

It is hereby ordered that the order of this Commission of April 1, 1915, in the above entitled matter (Decision No. 2271) be and it is hereby amended to the end that Southern Counties Gas Company be given authority and it is hereby given authority to use a portion of the proceeds derived from the sale of $150,000.00 of its three year 6 per cent gold notes for the purpose of acquiring $20,000.00 par value of its first mortgage bonds on the condition that said bonds shall be placed in a sinking fund provided under applicant's first mortgage and deed of trust;

It is further ordered that the order of this Commission of April 1, 1915, in the above entitled matter (Decision No. 2271), remain in full force and effect so far as not in conflict with the order herein.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

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Decision No. 2579.

IN THE MATTER OF THE REORGANIZATION OF UNITED LIGHT AND POWER COMPANY AND SUBSIDIARY COMPANIES.

Application No. 1542.

Decided July 8, 1915.

Applicants herein have heretofore submitted for the approval of the Commission a plan of reorganization which was authorized, under certain conditions, under Decisions Nos. 2359 and 2403, it now submits a revised plan which provides for an issue of bonds by the Consolidated Electric Company of the face value of $2,318,000.00 instead of $2,593,000.00 face value as originally proposed, to be issued for the purposes as heretofore specified with the exception of the $71,000.00 which was to be issued to Great Western Power Company covering discounts on the bonds which it is provided to purchase and as compensation for its guarantee of the bonds of Consolidated company. The amended application also provides that the $400,000.00 face value of bonds which were to be purchased by Great Western company at par shall be purchased instead, $100,000.00 at par when transfer of various properties becomes effective, the balance at subsequent periods at 80.

Held, It appearing that the amended application does not require any material change in the conditions under which this reorganization was heretofore authorized, application granted, all conditions specified in Decisions Nos. 2359 and 2403 to remain in full force and effect excepting such as are affected by the order herein and also provided: (1) That Consolidated Electric shall modify its trust deed to provide a sinking fund beginning 1920 to consist annually of a sum sufficient to retire not less than one per cent of outstanding bonds and also to provide for the consent of a higher percentage of bondholders before it can be amended, the present requirements being entirely too elastic, calling for only 18 per cent. (2) That the bonds purchased by Great Western Power Company shall be placed subject to its first mortgage and deed of trust, or if sold, property of an equal value shall be subjected to such lien in lieu thereof.

Report of the Commission.

SECOND SUPPLEMENTAL OPINION.

Heretofore, on May 10, 1915, this Commission issued an order (Decision No. 2359) in the above entitled matter authorizing United Light and Power Company, and certain of its subsidiaries, to sell their properties to Consolidated Electric Company; authorizing Consolidated Electric Company to issue certain stocks and bonds; and authorizing Great Western Power Company to guarantee the payment of said bonds. Thereafter, on May 20, 1915, this Commission issued a supplemental order (Decision No. 2403) in this matter authorizing certain modifications of its original order therein.

These two orders of this Commission authorized the transfer of the properties from United Light and Power Company, and its subsidiaries, to Mr. E. W. Wilson, and the conveyance of these same properties from Mr. Wilson to Consolidated Electric Company.

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The order further authorized Consolidated Electric Company to execute a mortgage and deed of trust providing for a total issue of $3,000,000.00 of its 5 per cent forty-year bonds. These orders provided further that Consolidated Electric Company might issue at this time $2,593,000.00 of said bonds, the order specifying the purposes for which the bonds should be issued.

The orders heretofore issued also authorized Consolidated Electric Company to issue its capital stock, consisting of 100 shares of the par value of $100.00 each, to Great Western Power Company and authorized Great Western Power Company to guarantee the payment both as to principal and interest of the bonds of Consolidated Electric Company. Reference is hereby made to Decision No. 2359 and Decision No. 2403, heretofore issued in connection with this application.

Applicants in this proceeding have now filed a second amended application, asking for certain modifications of the orders of this Commission heretofore issued. The second amended application states that the new plan differs from that heretofore presented in the following particulars:

(1) The aggregate amount of the proposed bonded debt of the Consolidated Electric Company is reduced from $3,000,000.00 to $2,500,000.00.

(2) The face amount of the bonds to be delivered to E. W. Wilson in payment of the purchase price of the properties of United Light and Power Company and subsidiary companies is reduced from $2,450,000.00 (less $243,000.00 face amount of underlying bonds) to $2,267,500.00 (less $243,000.00 face amount of underlying bonds).

(3) The proposal to issue $71,000.00 in bonds of the Consolidated Electric Company to the Great Western Power Company has been eliminated.

(4) The purchase price of $400,000.00 face value of bonds of the Consolidated Electric Company to be purchased by the Great Western Power Company has been reduced from par to an average net price of 85 per cent of par.

(5) The mortgage and deed of trust which it is now proposed to execute differs in certain particulars from that originally presented, chiefly in the following respects:

(*a*) The denomination of the bonds are to be $1,000.00, $500.00, $250.00 and $100.00 instead of only bonds of the denomination of $1,000.00, $500.00 and $100.00, as originally proposed.

(*b*) Specific mention of the stock of the United Light and Power Company and subsidiary companies has been omitted.

(*c*) A provision has been added permitting bondholders to consent to the modification of the trust instrument.

The applicants now request that this Commission issue an order authorizing them to proceed with their consolidation in all particulars as presented in this amended form of application.

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The application as now presented differs from the original presentation of this matter in two general particulars:

(1) The amount of bonds to be issued by Consolidated Electric Company.

(2) The form of mortgage and deed of trust to be executed by Consolidated Electric Company.

The modification as to the amount of bonds which it is proposed Consolidated Electric Company shall issue arises largely through a readjustment of the basis of settlement which United Light and Power Company proposes to make with its creditors and the creditors of its subsidiaries. It was proposed, according to the terms of the original application, that United Light and Power Company (of California) should settle with its outstanding bondholders by issuing to them bonds of Consolidated Electric Company at par for the bonds they held; that it should settle with the collateral noteholders of United Light and Power Company (of New Jersey) by issuing to them bonds of Consolidated Electric Company of a face value equal to 90 per cent of the face value of the collateral notes which they held; that it should settle with its unsecured creditors on the basis of 66⅔ per cent of the amount due said creditors, 10 per cent to be paid in cash and the balance in bonds of Consolidated Electric Company at par.

It is proposed under the amended plan now under consideration that United Light and Power Company shall settle with its bondholders and with the collateral noteholders of the United Light and Power Company (of New Jersey) by issuing to them Consolidated Electric bonds of a face value equal to 85 per cent of the face value of their holdings, and that it shall settle with its unsecured creditors in bonds of Consolidated Electric Company on the basis of 60 per cent instead of 66⅔ per cent, as originally proposed.

The settlement with these creditors as now proposed may be summarized as follows:

Class of obligation	Par value	Settlement as per original application		Settlement as per amended application	
		Rate of settlement, per cent	Amount	Rate of settlement, per cent	Amount
Bonds of United Light and Power Company	$534,000	100	$534,000	85	$453,900
Collateral trust notes	1,618,000	90	1,456,200	85	1,375,300
Unsecured indebtedness	360,781	66⅔	240,496	60	216,468
Totals	$2,512,781		$2,230,696		$2,045,668
Less 10 per cent cash payment of unsecured debt			24,019		21,646
Total bonds to be issued			$2,206,647		$2,024,022

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The original plan and the plan as now proposed both contemplate that $243,000.00 of bonds of Consolidated Electric Company shall be held in reserve for the retirement of a like amount of underlying bonds of United Light and Power Company. The original proposal called for an issue of $72,000.00 of bonds of Consolidated Electric Company for the purpose of rehabilitating the properties. The amended application reduces this sum to $50,500.00. It was originally proposed also that Consolidated Electric Company should issue $71,000.00 of bonds to Great Western Power Company for the purpose of equalizing discounts and for paying Great Western Power Company for its guarantee. The issue of this $71,000.00 of bonds has been eliminated in the plan as now presented.

The difference in the original proposal and in the present plan for the issue of bonds by Consolidated Electric Company may be summarized as follows:

	Original plan	Present plan
To issue to E. W. Wilson in payment for properties of United Light and Power Company and subsidiaries	$2,207,000	$2,024,500
Reserved to retire underlying bonds	243,000	243,000
For rehabilitation expenses	72,000	50,500
To Great Western Power Company	71,000	
Totals	$2,593,000	$2,318,000

It was provided in the original application in this matter that Great Western Power Company should purchase at par, within a period of four years, $400,000.00 of the bonds which Consolidated Electric Company petitioned for authority to issue. In the amended application it is proposed that Great Western Power Company shall purchase $400,000.00 of the bonds of Consolidated Electric Company as follows:

(*a*) One hundred thousand dollars at par when the agreements looking to the transfer of these properties to Consolidated Electric Company shall have become effective and Consolidated Electric Company shall have been duly organized.

(*b*) One hundred thousand dollars at 80 per cent of par value 12 months thereafter.

(*c*) One hundred thousand dollars at 80 per cent of par value one year after said lot (*b*) have been purchased.

(*d*) The balance of $100,000.00 at 80 per cent of par value two years after the purchase of said lot (*c*).

The Commission has heretofore issued an order authorizing the applicants to proceed under their original plan, upon certain specified conditions. The Commission has set forth in detail all of the facts in connection with this matter, the bases of its previous orders and of the conditions therein set out.

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We find nothing in the application as amended and now presented which requires any substantial alteration of the orders heretofore made, or the conditions therein specified.

As the Commission authorized an issue of $2,593,000.00 of bonds upon the conditions specified, it will, of course, authorize an issue of $2,318,000.00 of bonds upon the same conditions.

It will be necessary either for Consolidated Electric Company to amend its deed of trust, so as to provide for the sinking fund heretofore referred to in the two previous orders in this matter, or it will be incumbent upon Great Western Power Company to strengthen its guarantee of the bonds of Consolidated Electric Company in the manner heretofore indicated by this Commission.

The proposed deed of trust of Consolidated Electric Company as now presented contains a provision whereby it may be amended by a certain small percentage of its bondholders. The requirement is too elastic, and this order will, therefore, not approve the deed of trust until the provision has either been eliminated or reduced to a form which will more adequately safeguard the bondholders. As this deed of trust now stands it could be amended by the holders of 18 per cent of its bonds, and, as it is apparent from this proceeding that the owner of the stock of Consolidated Electric Company will hold 18 per cent of its bonds, it is apparent that such provision would not be conducive to that degree of protection which a trust indenture should give.

Accordingly we submit the following form of order:

SECOND SUPPLEMENTAL ORDER.

This Commission, on May 10, 1915, having issued its order (Decision No. 2359) in the above entitled matter, and this Commission on May 20, 1915, having issued its supplemental order (Decision No. 2403) in the above entitled matter, and the applicants now having requested certain modifications of said orders,

It is hereby ordered that Consolidated Electric Company be granted authority, and it is hereby granted authority, to execute a mortgage and deed of trust as security for an issue of $2,500,000.00 of forty-year 5 per cent bonds, said indenture to contain a provision for a sinking fund to apply toward the retirement of the bonds to be issued under said trust agreement, said sinking fund to consist annually, beginning in 1920, of a sum sufficient to retire not less than 1 per cent of the bonds outstanding under said trust indenture; said sum to be applied annually to the retirement of the bonds issued under said trust indenture in such amount that the bonds retired annually shall not be less than 1 per cent of the whole amount of the bonds then outstanding; said mortgage and deed of trust to become effective only when it shall have received the approval by supplemental order of this Commission.

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It is further ordered that Consolidated Electric Company be granted authority, and it is hereby granted authority, to issue $2,318,000.00 face value of its 5 per cent forty-year bonds, said bonds to be delivered and issued as follows:

Two million twenty-four thousand five hundred dollars of said bonds to be issued to E. W. Wilson in payment for the properties to be conveyed by E. W. Wilson to Consolidated Electric Company, consisting of the properties of United Light and Power Company (of New Jersey), United Light and Power Company (of California), Consumers Light and Power Company, Equitable Light and Power Company, South Side Light and Power Company, Central Oakland Light and Power Company, in accordance with a list of the assets of said companies on file with this Commission in this proceeding in Exhibit No. 12, and more particularly as listed in this proceeding with this Commission in the report of Francis E. Wilkinson, on file with this Commission;

Two hundred forty-three thousand dollars face value of said bonds to be issued from time to time for the purpose of paying $100,000.00 face value of bonds of Consumers Light and Power Company and $143,000.00 face value of bonds of Central Oakland Light and Power Company; said $243,000.00 to be so issued that for every bond of Consolidated Electric Company issued under this section of this order there shall be paid, discharged or retired a bond of like amount to Consumers Light and Power Company or of Central Oakland Light and Power Company;

Fifty thousand five hundred dollars face value of said bonds to be issued for the purpose of raising funds which shall be used in the rehabilitation of the properties to be acquired by Consolidated Electric Company, or for additions and betterments to said properties, said bonds to be sold at not less than 80 per cent of their face value, plus accrued interest thereon.

It is further ordered that the authorization herein given to issue said $2,024,500.00 of bonds, said $243,000.00 of bonds and said $50,500.00 of bonds shall be in lieu of the authorization heretofore given in Decision No. 2359 for the issue by Consolidated Electric Company of $2,207,000.00 of bonds; $243,000.00 of bonds; $71,000.00 of bonds and $72,000.00 of bonds;

It is further ordered that Great Western Power Company be granted authority and it is hereby granted authority to purchase $400,000.00 face value of bonds of Consolidated Electric Company from E. W. Wilson, or his nominees, in accordance with an agreement between said Consolidated Electric Company and said E. W. Wilson, dated June 3, 1915, and filed with the second amended application herein, and marked "2d Amended Ap. Exhibit B," on the condition that said $400,000.00 of bonds when purchased shall be placed by Great Western Power Company under the lien of its first mortgage and deed of trust, subject

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to the provisions of said first mortgage and deed of trust, either to remain under said mortgage and deed of trust, or to be sold only on the condition that there shall be placed under said first mortgage and deed of trust property of equal value;

It is further ordered that the authority herein granted to Great Western Power Company to purchase said $400,000.00 of bonds, on the conditions herein enumerated, shall be in lieu of the authority heretofore granted Great Western Power Company in Decision No. 2359 to purchase said $400,000.00 of bonds on the conditions therein enumerated, and in lieu of the authority heretofore granted Great Western Power Company in Decision No. 2403 to purchase said $400,000.00 of bonds on the conditions therein specified;

It is further ordered that Great Western Power Company be granted authority, and it is hereby granted authority, to guarantee the performance by Consolidated Electric Company of such contract as Consolidated Electric Company may enter into with San Francisco-Oakland Terminal Railways for the sale of electric energy.

It is further ordered that the order of this Commission heretofore issued in the above entitled matter (Decision No. 2359), and the supplemental order issued by this Commission on May 20, 1915 (Decision No. 2403), shall remain in full force and effect, except as to such parts of said orders as may be in conflict with this second supplemental order.

The foregoing second supplemental opinion and order are hereby approved and ordered filed as the second supplemental opinion and order of the Railroad Commission of the State of California.,

Dated at San Francisco, California, this 8th day of July, 1915.

DECISION NO. 2580.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO VALLEY TELEPHONE COMPANY FOR AUTHORIZATION TO CREATE A BONDED INDEBTEDNESS OF FIVE HUNDRED THOUSAND DOLLARS, TO EXECUTE A DEED OF TRUST TO SECURE THE SAME, TO PURCHASE PROPERTY, TO ISSUE STOCK AND BONDS FOR CASH AND FOR PROPERTY, AND TO OPERATE UNDER VARIOUS FRANCHISES; OF GLENN COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY; OF TEHAMA COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY, AND OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION

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TO SELL CERTAIN PROPERTY FOR BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY AND TO SUBSCRIBE FOR STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY.

Application No. 1680.

Decided July 8, 1915.

Telephone patrons located in Glenn and Tehama counties being dissatisfied with the service of the Pacific Telephone and Telegraph Company, organize the Glenn County Telephone Company operating in Glenn County and the Tehama County Telephone Company operating in Tehama County, both in competition with the system of the Pacific company, and all three companies now being operated at a loss, apply for permission to merge their respective systems into one concern known as the Sacramento Valley Telephone Company.

The proposed plan includes the transfer of the physical properties and franchises of the Glenn and Tehama companies and the physical properties and franchises of the Pacific company in Glenn and Tehama counties to the Sacramento Valley Company and the issuance by the latter company of a total of $193,500.00 par value of stock and $190,000.00 face value of bonds. Of the stock 1,900 shares of the par value of $100.00 are to be purchased by the Pacific company at par, 20 shares to be delivered to the Glenn company in addition to $68,000.00 in cash and $13,000.00 face value of bonds in payment for its properties, and 15 shares to the Tehama company in addition to $43,500.00 in cash and $12,000.00 face value of bonds in payment for its properties. The balance of $165,000.00 face value of bonds to be issued to Pacific company in payment for properties transferred.

Held, That though the three companies are at present operating in competition and now propose to merge into one monopolistic concern, the consolidated utility will be subject to public regulation, and though no reduction in rates takes place, the elimination of duplicated facilities will effect a considerable saving to telephone patrons, while at the same time giving to them a far more efficient service.

Held, Application granted, provided, that applicants first secure the consent of various county and city authorities to the transfer of the respective franchises, also that no value will ever be claimed for such franchises in excess of their actual cost. That Sacramento Valley company amend its trust deed in certain particulars and also assume all contracts and obligations at present binding upon the companies proposed to be transferred.

H. P. Andrews, for Glenn County Telephone Company, Tehama County Telephone Company and Sacramento Valley Telephone Company.

J. T. Shaw and *H. D. Pillsbury*, for the Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application on the part of Glenn County Telephone Company and Tehama County Telephone Company to sell their telephone properties to Sacramento Valley Telephone Company; on the part of

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the Pacific Telephone and Telegraph Company to transfer certain portions of its telephone plant located in Glenn and Tehama counties to Sacramento Valley Telephone Company; and an application by Sacramento Valley Telephone Company to mortgage the property which it will thus acquire and to issue $193,500.00 par value of stock and $190,000.00 face value of bonds. The Pacific Telephone and Telegraph Company requests authority also to acquire $190,000.00 par value of the stock of Sacramento Valley Telephone Company.

These applications have grown out of a competitive situation in the telephone business of Glenn and Tehama counties. The Pacific Telephone and Telegraph Company had been serving this territory for a number of years. Dissatisfaction with the service rendered by the Pacific Telephone and Telegraph Company led to the organization, in December, 1907, of the Glenn County Telephone Company, and in July, 1910, of the Tehama County Telephone Company, the former serving the people of Glenn County and the latter those of Tehama County.

Each of these companies has competed in its respective field with the Pacific Telephone and Telegraph Company. After an experience extending over a period of years, all three companies report that the competitive operation has been unprofitable and dissatisfactory. For the purpose of bringing this situation to a close, they join in the application here presented.

In general terms, the application provides for the consolidation of the properties of the Glenn County Telephone Company, the Tehama County Telephone Company, and certain portions of the telephone system of the Pacific Telephone and Telegraph Company in Glenn and Tehama counties, including its exchange facilities, but excepting its through toll pole lines and its through toll aerial wires. The proposed consolidation contemplates that the new company, to be known as Sacramento Valley Telephone Company, shall own the local exchange systems in Glenn and Tehama counties and the toll service located wholly within those two counties. The through long distance toll service is to be retained by the Pacific Telephone and Telegraph Company. The Pacific Telephone and Telegraph Company is to retain exchange lines in a small area in northern Tehama County, served by one of its exchanges in Shasta County.

The applicants have submitted estimates of the value of the properties to be consolidated as follows:

Glenn County Telephone Company properties	$114,960 69
Tehama County Telephone properties	66,797 15
The Pacific Telephone and Telegraph Company properties to be transferred	226,226 76
Total	$407,984 60

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It is also proposed by the applicants that the Glenn County Telephone Company shall transfer to the Sacramento Valley Telephone Company its franchises granted by the county of Glenn and by the town of Willows; that the Tehama Telephone Company shall transfer to the Sacramento Valley Telephone Company its franchises granted by the county of Tehama and the towns of Tehama, Red Bluff and Corning. No provision is made for the transfer to the Sacramento Valley Telephone Company of the franchises now held by the Pacific Telephone and Telegraph Company in Willows and Red Bluff.

The properties which it is proposed the Glenn County Telephone Company shall transfer to the Sacramento Valley Telephone Company are described in Exhibit "F," attached to the application herein. The physical properties therein described may be summarized as follows:

> Glenn County Telephone Company's exchanges and systems located at Orland, Willows, Germantown and Butte City, all in Glenn County.
>
> The exchange lines radiating therefrom and the toll lines connecting the exchanges.
>
> Also, toll lines extending from Orland to Newville, thence south to Elk Creek, Rockville, Winslow, Stonyford and East Park Dam.
>
> Also, toll lines from Orland to Hamilton City, Saint John and south to Princeton.

The properties which it is proposed shall be transferred by Tehama County Telephone Company to Sacramento Valley Telephone Company are described in Exhibit "H," attached to the application herein. The physical properties therein described may be summarized as follows:

> The Tehama County Telephone Company's exchanges and systems located at Red Bluff and Corning, in Tehama County, together with the exchange lines radiating therefrom.
>
> Also, toll lines from Red Bluff south to Corning and Tehama.
>
> Also, the toll line west to Paskenta.

The properties which it is proposed shall be transferred by the Pacific Telephone and Telegraph Company to Sacramento Valley Telephone Company are described in Exhibit "J," attached to the application herein. This exhibit contains the deed of sale, which reads, in part, as follows:

> "The Pacific Telephone and Telegraph Company agrees to sell all of its telephone exchanges in the counties of Glenn and Tehama, and the exchange lines radiating therefrom, also all other property situated in the counties of Glenn and Tehama, except,
>
> 1. Through toll pole lines.
> 2. Through toll aerial wires.
> 3. The subscriber's stations which are duplicated by the stations of the Glenn and Tehama counties telephone companies.

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4. The local pole and wire lines serving subscribers in Tehama County from the switchboard in Cottonwood, Shasta County.
5. The equipment in Red Bluff exchange central office other than the equipment used in testing the toll lines.
6. The switchboard in the Orland exchange central office.
7. The equipment in the Butte City exchange central office.
8. The material and supplies, the shop and store equipment in the exchanges at Red Bluff, Corning, Orland and Butte City.

The Pacific Telephone and Telegraph Company will turn over to the Sacramento Valley Telephone Company a portion of its telephone plants located at the following points in Glenn and Tehama counties:

Butte City, Elk Creek, Fruto, Hamilton, Norman, Orland, Willows, Saint John, Winslow, Corning, Los Molinos, Manton, Paskenta, Payne's Creek, Red Bluff, Vina.

The applicants appraise the properties of the Pacific Telephone and Telegraph Company in this territory which it is now proposed to transfer to Sacramento Valley Telephone Company at $243,693.63. Of this amount, property valued by the applicants at $226,226.76 will be turned over to the Sacramento Valley Telephone Company. The balance will be retained by the Pacific Telephone and Telegraph Company.

The Sacramento Valley Telephone Company will, therefore, operate a system of exchanges and toll lines in Glenn and Tehama counties with central exchange switchboards and exchange and toll lines radiating therefrom, at Red Bluff, Payne's Creek, Manton, Los Molinos, Vina, Corning and Paskenta in Tehama County; and at Orland, Saint John, Hamilton, Germantown, Willows, Norman, Butte City, Fruto and Elk Creek in Glenn County; and toll lines and toll stations at Proberta and Henleyville, in Tehama County; Newville, Winslow and Athena, in Glenn County; and at Stonyford, East Park Dam and Princeton, in Colusa County.

For the calendar year 1914 the Glenn County Telephone Company reported earnings and expenses as follows:

Operating revenues	$15,482 50	
Operating expenses	12,116 07	
Net operating revenues		$3,366 43
Interest, rent, etc.		3,246 87
Surplus for year		$119 58

For the calendar year 1913, the company reported a surplus of $3,777.15.

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For the calendar year 1914, the Tehama County Telephone Company reported as follows:

Operating revenue	$8,567 60	
Operating expenses	8,502 96	
Net operating revenue		$64 64

Neither the Glenn County Telephone Company nor the Tehama County Telephone Company have paid any dividends.

The Sacramento Valley Telephone Company will have in addition the earnings attributable to those portions of the Pacific Telephone and Telegraph Company's system which it will acquire in Glenn and Tehama counties.

The Sacramento Valley Telephone Company has been incorporated with an authorized stock issue of 5,000 shares of the par value of $100.00 per share, or a total par value of $500,000.00. It has an authorized issue of $500,000.00 face value first mortgage 6 per cent twenty-year gold bonds.

It is now proposed in this application that Sacramento Valley Telephone Company shall issue $193,500.00 par value of stock consisting of 1,935 shares and $193,000.00 face value of bonds.

The stock is to be sold or delivered as follows:

One hundred twenty-five thousand dollars par value to be sold to the Pacific Telephone and Telegraph Company at par for cash.

Sixty-five thousand dollars par value to be delivered to the Pacific Telephone and Telegraph Company as part payment for property.

Two thousand dollars par value to be delivered to Glenn County Telephone Company as part payment for property.

One thousand five hundred dollars par value to be delivered to Tehama County Telephone Company as part payment for property.

The cash received from the sale of this stock will be used by Sacramento Valley Telephone Company as follows:

Sixty-eight thousand dollars to pay in part for property of Glenn County Telephone Company.

Forty-three thousand five hundred dollars to pay in part for property of Tehama County Telephone Company.

Ten thousand five hundred dollars to pay note due the Pacific Telephone and Telegraph Company for moneys advanced.

Three thousand dollars to be retained for working capital.

The Sacramento Valley Telephone Company proposes to issue the $190,000.00 face value of bonds as follows:

Thirteen thousand dollars face value to Glenn County Telephone Company.

Twelve thousand dollars face value to Tehama County Telephone Company.

One hundred sixty-five thousand dollars face value to the Pacific Telephone and Telegraph Company.

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It appears, therefore, that for the property of Glenn County Telephone Company, which is appraised by the applicants at $114,960.69, Sacramento Valley Telephone Company proposes to pay $88,000.00 in cash, bonds and stock, as follows:

Cash from sale of stock	$68,000 00
Cash deposited as guarantee	5,000 00
Bonds, face value	13,000 00
Stock, par value	2,000 00

For the properties of Tehama County Telephone Company, which the applicants appraise at $66,797.15, Sacramento Valley Telephone Company proposes to pay $62,000.00 in cash, bonds and stock, as follows:

Cash derived from sale of stock	$43,500 00
Cash deposited as guarantee	5,000 00
Bonds, face value	12,000 00
Stock, par value	1,500 00

For the properties of the Pacific Telephone and Telegraph Company, which applicants appraise at $226,226.76, the Sacramento Valley Telephone Company proposes to pay $230,000.00 in stocks and bonds, as follows:

Bonds	$165,000 00
Stock	65,000 00

It was stated in testimony that the negotiations looking to the consummation of this transaction were conducted by Mr. F. H. Crosby, a broker, who was to receive as part of his compensation $3,500.00 par value of stock of Sacramento Valley Telephone Company. This stock will be paid: $2,000.00 by Glenn County Telephone Company, and $1,500.00 by Tehama County Telephone Company. The result, therefore, will be that of the $193,500.00 par value of stock proposed to be issued by Sacramento Valley Telephone Company, $190,000.00 will be owned by the Pacific Telephone and Telegraph Company and $3,500.00 by Mr. Crosby.

Of the bonds to be issued by Sacramento Valley Telephone Company, $165,000.00 will be issued to the Pacific Telephone and Telegraph Company and the remaining $25,000.00 will be held by Glenn County Telephone Company and Tehama County Telephone Company, with the exception of a small amount to be given to Mr. Crosby as part of his commission.

It is apparent, therefore, that the control of Sacramento Valley Telephone Company will be lodged with the Pacific Telephone and Telegraph Company. In fact the relationship will be such that Sacramento Valley Telephone Company may be considered in reality a subsidiary corporation of the Pacific Telephone and Telegraph Company.

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While the applicants have appraised the property of Glenn County Telephone Company at $114,960.60, it is intended that it pass into the possession of Sacramento Valley Telephone Company for a consideration of $88,000.00. The representatives of the Pacific Telephone and Telegraph Company stipulated at the hearing that if the authorization here applied for were granted, no claim would henceforth be made for a valuation for rate-fixing purposes of the properties of Glenn County Telephone Company beyond the sum of $88,000.00 paid therefor.

A stipulation was also made as to the properties of Tehama County Telephone Company which were appraised at $66,797.15 by the applicants and which, it is proposed, shall pass into the possession of Sacramento Valley Telephone Company for the consideration of $62,000.00. This stipulation was to the effect that hereafter no claim should be advanced for the values upon these properties for rate-fixing purposes beyond the sum of $62,000.00 paid therefor.

The Glenn County Telephone Company has heretofore reported 966 subscribers and the Tehama County Telephone Company 645 subscribers. The Pacific Telephone and Telegraph Company has reported approximately 1,600 additional subscribers in Glenn and Tehama counties. The consolidated corporation, therefore, in the form of Sacramento Valley Telephone Company, would have approximately 3,000 subscribers. The estimate of the applicants is 3,090 subscribers. A summary has been prepared by the applicants estimating, on the basis of the present earnings of the three companies in Glenn and Tehama counties, gross annual revenues for the consolidated properties of $56,818.81 for the calendar year 1914. The total is made up as follows:

Exchange revenue	$47,160 60
Inter-exchange revenue	9,658 21

The applicant submits a statement showing the estimated value and capitalization per station as follows:

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Statement for Glenn and Tehama Counties, showing Average Plant per Exchange Station.

		Present value	Stations	Average per station	Selling price	Stations	Average per station
Pacific Co.		$226,226 76	1,627	$139 05	$230,000 00	1,627	$141 36
Glenn County Co.	$114,960 69		855	134 46			
Tehama County Co.	66,797 15		608	109 86			
	$181,757 84	181,757 84	1,463	124 24	150,000 00	1,463	102 53
		$407,984 60		$132 03	$380,000 00	3,090	$122 98
Organization expense					100 75		
Working capital					3,399 25		
Stocks and bonds					$383,500 00	3,090	$124 11

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On the data submitted by the applicant, therefore, it would appear that the capitalization per station would be $124.11. On the estimate of $56,818.00 for the gross revenues, gross earnings per station would amount to $18.38. This will call for an average telephone rate of approximately $1.50 per station. With a capitalization of $383,500.00, figured at 6 per cent, the applicant would be required to earn net $23,010.00, or $7.44 per station. This will leave an average of $10.94 for operating expenses, depreciation and taxes.

The attention of the applicant was directed at the hearing to the fact that although an effort had been made to eliminate certain features of the Pacific Telephone and Telegraph Company's plant from consolidation, there would nevertheless remain in the consolidated company's hands, certain duplicate facilities not useful to the system at this time. The applicants stated that such duplication features as remain, including exchange lines, poles and facilities, would gradually be welded into the unified system. However, the applicants volunteered that such duplication as might now be found to exist would be absorbed by the Pacific Telephone and Telegraph Company through its ownership of stock of the Sacramento Valley Telephone Company. The statement was made that the Pacific Telephone and Telegraph Company proposed to retain and not to dispose of the stock of Sacramento Valley Telephone Company. Mr. Crosby, who was also present at the hearing and who will be the only other stockholder of the Sacramento Valley Telephone Company, stated he was willing to take his chances with the Pacific Telephone and Telegraph Company in the understanding that such duplication as might remain in the consolidated plant would, in the last analysis, be chargeable against the stock.

I, therefore, deem it unnecessary to make a detailed investigation into the estimates of value here presented. I am of the opinion, however, that the estimates submitted are subject to revision in certain particulars.

In the proposed consolidation all of the franchises now held by Glenn County Telephone Company and Tehama County Telephone Company are to be transferred to Sacramento Valley Telephone Company. The franchises now owned by the Pacific Telephone and Telegraph Company in Glenn and Tehama counties are not to be transferred to Sacramento Valley Telephone Company.

The Pacific Telephone and Telegraph Company is operating under special franchises in Willows and Red Bluff. Under the terms of the Willows franchise of the Pacific Telephone and Telegraph Company, it is obligated to give certain free service for the benefit of the town. No such obligation is imposed upon Glenn County Telephone Company in its Willows franchise.

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As contemplated, therefore, Sacramento Valley Telephone Company will be under only those obligations in Willows which are imposed in the franchise of Glenn County Telephone Company.

The Pacific Telephone and Telegraph Company will cease to operate locally in Willows and, therefore, the free service heretofore given to the town of Willows will be discontinued.

Applicants stated that they would submit this question to the town authorities of Willows and such authorization as may hereafter be given for the transfer of the franchise in Willows to the Sacramento Valley Telephone Company will be conditioned upon the prior approval of such transfer by the town authorities of Willows.

The franchises under which Sacramento Valley Telephone Company will operate are for a term of fifteen years and the first maturity will be in 1956.

No unusual obligations are imposed in any of these franchises, with the exception of the franchise at Corning. This franchise assumes to fix the rates which shall be charged to subscribers.

All of the franchises contain the usual provisions of the Broughton Act, providing for the annual payment of 2 per cent of the gross receipts after five years.

The bonds to be issued by Sacramento Valley Telephone Company will mature twenty years from date. The proposed deed of trust to secure these bonds has been submitted, but it is indefinite in several respects and approval will, therefore, be withheld until it is made definite and clear.

It was stipulated at the hearing that Sacramento Valley Telephone Company would assume all contract obligations for connecting telephone service in Glenn and Tehama counties now binding upon any of the three companies to be consolidated.

The American Telephone and Telegraph Company, which controls the Pacific Telephone and Telegraph Company, has heretofore entered into an agreement with the attorney general of the United States, wherein it stipulates that:

> "Neither the American Telephone and Telegraph Company nor any other company in the Bell system will hereafter acquire directly or indirectly, through purchase of its physical property or of its securities or otherwise, dominion or control over any other telephone company owning, controlling or operating any exchange or line which is, or may be, operated in competition with any exchange or line included in the Bell system; or which constitutes, or may constitute, a link or portion of any system so operated, or which may be so operated, in competition with any exchange or line included in the Bell system."

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Attached to this stipulation is the provision—

> "Provided, however, that where control of the properties or securities of any other telephone company heretofore has been acquired and is now held by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, or where binding obligations for the acquisition of the properties or securities of any other telephone company heretofore has been entered into by or in the interest of any company in the Bell system, and no physical union or consolidation has been effected, the question as to the course to be pursued in such cases will be submitted to your department (meaning the Department of Justice at Washington) and to the Interstate Commerce Commission for such advice and directions, if any, as either may think proper to give, due regard being had to public convenience and to the rulings of local tribunes."

The applicants stated that negotiations had been pending for the consolidation herein proposed for a period of five years, that the matter had been referred to the attorney general at Washington and that he had directed applicants to bring the matter to his attention after they had obtained a ruling on the proposed consolidation from the Railroad Commission of California.

This Commission will be confined, of course, in its findings to those matters over which it has jurisdiction within the State of California.

We are confronted, therefore, with the proposal that these telephone systems in Glenn and Tehama counties, heretofore in competition, be allowed to merge. In other words, this is an application to substitute a regulated monopoly for a competitive service. The testimony offered by the three companies proposing to merge is uniformly to the effect that each has found the business unprofitable, due to competition. It is argued that there has not been sufficient business in each county to enable two competitive companies to make a profit, but that there is sufficient business in the two counties to enable one consolidated company to make an adequate earning. This testimony is borne out by the records.

Neither the Glenn County company nor the Tehama County company has been able to do much more than meet its bare expenses without even a proper allowance for depreciation, and there has been no return upon the stock investment.

The Pacific Telephone and Telegraph Company also reports that its business in these two counties has been unprofitable.

We may assume, therefore, that the competitive condition has been unfortunate in its effect upon the three companies concerned, and that a continuance of this competitive condition will further accentuate this disadvantageous condition. It is possible, of course, that in the long run

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the two weaker and smaller companies would be forced out of business by the strongest among them.

We have, therefore, to consider the effect of the proposed consolidation upon the public; to determine the public interest as between the competitive condition and the proposed condition of regulated monopoly. The interest of the public goes directly to the rates and to the service.

Petitions from the boards of supervisors, town trustees and chambers of commerce of Glenn and Tehama counties have been filed with this Commission requesting that the authorization to merge these telephone plants as herein requested be granted.

The companies involved have not been able to serve their patrons at the present rates at a profit and it would certainly follow that a continuation of the loss would mean a curtailment and depreciation of service.

Competitive service means duplication of facilities and the greater the competition the greater the duplication. These subscribers are, of course, under necessity to pay a return upon this duplicated property when a single facility would serve the whole purpose. In fact, it appears in this case that there are 696 duplicate services in the two counties. Therefore, these subscribers to the number of 696 are paying double rates, once to the Pacific Telephone and Telegraph Company and again to either the Tehama County Telephone Company or the Glenn County Telephone Company to obtain a service which it is herein proposed that the single agency in the form of the Sacramento Valley Telephone Company shall perform.

It has been stipulated in this proceeding that the present rates shall remain in force for the present. Thereafter certain adjustments will be required to remove the discriminations which may now exist. It would appear, therefore, that the consolidation will for the present mean no change in the rate schedule, but will serve to relieve those who are now paying the double rates by reason of the fact that they are subscribers to the two telephone systems.

The annual sum paid for these duplicate services by the companies' subscribers is estimated at $12,000.00.

It appears further that the losses of the three companies would probably occasion some readjustment of rates in the near future in order that they might continue to give service. It is furthermore apparent that the total to be paid in rates by the subscribers in these two counties to the three companies will in any arrangement be greater than the total amount to be paid to a single company which may be substituted to perform the same service.

It is clear that the proposed consolidation should lead to a great improvement in the telephone service rendered in these two counties. At present, subscribers on the lines of the Tehama County Telephone

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Company and the Glenn County Telephone Company have not the privilege of interchange toll switching with the Pacific Telephone and Telegraph Company. They are required to use the Pacific Telephone and Telegraph Company for long distance service. Under the proposed consolidation, Sacramento Valley Telephone Company will handle all of the toll business located wholly within the two counties of Glenn and Tehama and will have interchange service at the customary rates established for independent companies with the Pacific Telephone and Telegraph Company for messages to and from points outside of Glenn and Tehama counties. Moreover, the new company, Sacramento Valley Telephone Company, if this plan is approved, will be in such financial position and will have such financial support that it should be able to render a high class of service to its patrons.

Certain farmer line companies now having connection with either the Glenn or Tehama companies will be protected in these connections by the Sacramento Valley Telephone Company.

In view of all of these facts, I recommend that the application be granted, and I accordingly submit the following form of order:

ORDER.

Glenn County Telephone Company and Tehama County Telephone Company having applied to this Commission for authority to sell their telephone plants and to transfer their franchises to Sacramento Valley Telephone Company, and the Pacific Telephone and Telegraph Company having requested authority to transfer certain of its telephone properties located in Glenn and Tehama counties to Sacramento Valley Telephone Company, and Sacramento Valley Telephone Company having applied to this Commission for authority to issue $193,500.00 par value of stock and $190,000.00 face value of its twenty-year 6 per cent first mortgage bonds; and Sacramento Valley Telephone Company having applied for authority to execute a mortgage and deed of trust to secure said issue of bonds, and the Pacific Telephone and Telegraph Company having applied to this Commission for authority to acquire $190,000.00 par value of stock of Sacramento Valley Telephone Company;

And a hearing having been held, and the Commission being fully advised in the premises, and it appearing that the public interest will be served by granting the application as herein made:

And it appearing further that the stocks and bonds which Sacramento Valley Telephone Company herein requests authority to issue are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered as follows:

That Glenn County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Tele-

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phone Company its telephone properties as listed in Exhibit "F," filed in connection with the application herein.

That Glenn County Telephone Company be granted authority, and it is hereby granted authority, to convey to Sacramento Valley Telephone Company its franchises heretofore granted by the county of Glenn and the town of Willows for the operation of a telephone system in Glenn County.

That Glenn County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its telephone properties as listed in Exhibit "H," attached to the application herein.

That Tehama County Telephone Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its franchises for the operation of a telephone system heretofore granted by the county of Tehama and the towns of Tehama, Red Bluff and Corning.

That the Pacific Telephone and Telegraph Company be granted authority, and it is hereby granted authority, to transfer to Sacramento Valley Telephone Company its telephone properties in Glenn and Tehama counties, as listed in Exhibit "J," attached to the application herein.

That Sacramento Valley Telephone Company be granted authority, and it is hereby granted authority, to issue 1,935 shares of its capital stock of the par value of $100.00 per share, or a total par value of $193,500.00.

That Sacramento Valley Telephone Company be granted authority, and it is hereby granted authority, to issue $190,000.00 of its first mortgage 6 per cent twenty-year bonds.

That Sacramento Valley Telephone Company be granted authority, and it is hereby granted authority, to execute a mortgage and deed of trust to secure said issue of bonds after this Commission shall have issued a supplemental order approving the form of deed of trust herein authorized to be issued.

That the Pacific Telephone and Telegraph Company be granted authority, and it is hereby granted authority, to acquire 1,900 shares of the capital stock of the Sacramento Valley Telephone Company of the par value of $100.00 per share, or a total value of $190,000.00.

The authority herein granted is granted upon the following conditions and not otherwise:

(1) Glenn County Telephone Company, Tehama County Telephone Company and the Pacific Telephone and Telegraph Company shall give to Sacramento Valley Telephone Company a good and sufficient deed for the properties herein authorized to be transferred.

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(2) The franchise granted by the town of Willows to Glenn County Telephone Company herein authorized to be transferred to Sacramento Valley Telephone Company shall be transferred only after such transfer shall have been approved by the public authorities of the town of Willows and after this Commission shall have issued a supplemental order approving such transfer.

(3) The authority herein granted to Glenn County Telephone Company and Tehama County Telephone Company to convey franchises in Glenn and Tehama counties to Sacramento Valley Telephone Company shall be effective only after Sacramento Valley Telephone Company shall have filed a stipulation with this Commission to the effect that it shall agree that the value to be placed upon said franchises in any rate fixing proceeding, or any purchase or condemnation by public authority, shall be a sum not in excess of the original cost of said franchises.

(4.) The authority herein granted to Sacramento Valley Telephone Company to issue stock is granted upon the following conditions and not otherwise:

(*a*) One thousand two hundred and fifty shares of said stock shall be sold to the Pacific Telephone and Telegraph Company at par for cash.

(*b*) Six hundred and fifty shares of par value of said stock shall be sold to the Pacific Telephone and Telegraph Company as part payment for the properties to be transferred.

(*c*) Twenty shares of said stock shall be delivered to Glenn County Telephone Company as part payment for the properties to be transferred.

(*d*) Fifteen shares of said stock shall be delivered to Tehama County Telephone Company as part payment for the properties to be transferred.

(*e*) The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	$68,000 00
2. In part payment for property of Tehama County Telephone Company	43,500 00
3. In part payment of note due the Pacific Telephone and Telegraph Company for funds advanced	10,000 00
4. To be retained for working capital	3,000 00
Total	$124,500 00

(5) The bonds herein authorized to be issued by Sacramento Valley Telephone Company shall be issued for the following purposes, and not otherwise:

(*a*) Thirteen thousand dollars face value of said bonds shall be issued to Glenn County Telephone Company in part payment for the properties to be transferred.

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(*b*) Twelve thousand dollars face value of said bonds shall be issued to Tehama County Telephone Company in part payment for the properties to be transferred.

(*c*) One hundred sixty-five thousand dollars face value of said bonds shall be issued to the Pacific Telephone and Telegraph Company in part payment for the properties to be transferred.

(6) Sacramento Valley Telephone Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stocks and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds and notes during the preceding months, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(7) The authority herein given shall apply to such stocks and bonds as shall have been issued and sold on or before June 30, 1916.

(8) The authority herein given is conditioned upon the payment of the fee prescribed under the Public Utilities Act as amended.

(9) Sacramento Valley Telephone Company shall assume all contracts and obligations for telephone service binding upon Glenn County Telephone Company, Tehama County Telephone Company and the Pacific Telephone and Telegraph Company in Glenn and Tehama counties, with the exception of service in Tehama County from the exchange of the Pacific Telephone and Telegraph Company at Cottonwood, Shasta County, and the toll service of the Pacific Telephone and Telegraph Company to and from points outside of said counties.

(10) The authority herein granted as to the transfer of property, the transfer of franchises, the issue of stocks and bonds and the acquisition of stock shall be effective only after this Commission shall have issued a supplemental order finding that the applicants herein have complied with all the conditions herein set out.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

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Decision No. 2581.

IN THE MATTER OF THE APPLICATION OF TUJUNGA WATER AND POWER COMPANY FOR AN INCREASE OF RATE TO BE CHARGED AND PAID TO IT FOR FURNISHING, DISTRIBUTING AND SELLING ITS WATER TO THE PUBLIC USERS THEREOF AND ESPECIALLY TO THE INHABITANTS OF THOSE COMMUNITIES KNOWN AS TUJUNGA TERRACE AND HANSEN HEIGHTS (UNINCORPORATED).

Application No. 1493.

Decided July 8, 1915.

Applicant applies for permission to increase its rates for water. It is at present delivering water under a clause incorporated in the deeds given to purchasers of property in the district which it is serving, in which it agreed to deliver water for irrigation purposes at 1 cent per inch per hour with an annual minimum of $2.50 per acre, which contracts it has previously been held by this Commission it has the power to alter should public necessity require such action.

Held, That the Commission has no power to compel consumers of a utility to pay for water which they do not use, that to abolish the minimum at present paid by certain land owners who are not at present users of water will not lose to them their right to demand water when they may so desire, provided water is available when they are ready to use it.

Held, That applicant's system is considerably overbuilt and rates can not be established to provide a return upon its full value. Rate of $1.00 per month minimum entitling consumer to 800 cubic feet with 10 cents per 100 cubic feet for excess, established for domestic service and $6.00 per acre per year for 300 hour inches and 1½ cents per hour inch for excess established for irrigation service, to become effective on and after July 15, 1915, provided applicants for service shall first declare, on or before the fifteenth of April of each year, the number of acres they propose to irrigate, paying one-half the minimum charge therefor at that time.

F. E. Davis, for Applicant.

James Donovan, for Dan and William Clemmons, Protestants.

J. Madison Carter, for Protestants in Tujunga Terrace and Hansen Heights.

W. F. Irvine and *Wm. H. Holmes*, for Eucalyptus Estates Company.

Report of the Commission.

Loveland, *Commissioner.*

This is an application for a raise in rates for water furnished the residents of two districts bordering the Big Tujunga River, about twenty miles northward from Los Angeles. The affairs of the applicant have been brought before this Commission in a number of proceedings in which were concerned the quality and adequacy of the service rendered, and I have deemed it wise to go very fully into matters which the application for a raise in rates alone would not have fully justified.

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There were two sessions of hearings in this application, both held in Los Angeles, and the briefs arranged for have now been filed. The issues involved may generally be classed as follows:

Water rights under the land contracts.
Supply of water.
Quality of service rendered.
Value of the water system.
Proper maintenance and operation expense.
Fair rates.

Applicant operates a gravity water system on the eastern edge of San Fernando Valley, north of Los Angeles, obtaining water from the surface flow of Tujunga Creek and from a tunnel which develops subterranean flow. Flowing a short distance in a flume buried under the channel, the water enters a 24-inch redwood pipe and is conveyed to the lands known as the Tujunga Terrace and Hansen Heights. The length of this wood-stave pipe line is about two miles and the entire distance is traversed by the water going to Hansen Heights while the water for the Terrace leaves the wood-stave pipe line at a point about 6,000 feet below the intake and is carried across the river channel by a 6-inch pipe, which has replaced a pipe formerly 12 inches in diameter. A complicated system distributes the water over the subdivisions, and under the pressure afforded, it was testified, all the 1,666 acres may be considered susceptible to irrigation.

The Tujunga Water and Power Company is no longer in the business of selling lands but confines its activities to the sale and distribution of water. The predecessor of applicant, known as Tujunga Company, entered into certain contracts with settlers under the system and considerable time and attention is given in the briefs as to whether or not these contracts are legally binding upon applicant.

Under application of James A. Murray and Ed Fletcher for an order authorizing an increase in rentals (2 R. R. C. 464, Application 118) the principle has been definitely established that this Commission has the power to set aside contracts for the sale of water, when in the opinion of the Commission, such contracts are against public interest.

In another application, No. 635, Ventura County Power Company, for an order authorizing an increase in rates under the Mound System (4 R. R. C. 686) it did not appear expedient to the Commission to disturb the schedule of rates established by contract. In other words, this case like all others adjudicated by this Commission must stand by and be decided upon the facts obtaining. In this application I shall find it necessary to modify the rate as established in the contracts.

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The clauses in the deeds which Tujunga Company gave to settlers, referring especially to water rights, etc., are as follows:

> "That whereas, the seller now owns the right to divert and use all water which flows in the Tujunga River from a point in said river about three miles east of the town of Monte Vista through the west portion of the Tujunga Ranch, except 37 miner's inches continuous flow thereof, which belongs to the town of Monte Vista and except also water now actually used by settlers along said river east of said ranch, not exceeding 50 miner's inches, miner's continuous flow; and said seller is now engaged in the construction of reservoirs and pipe lines to collect and store said water and to deliver said water over lands in the said west portion of the Tujunga Ranch, of which the premises above described are a part; and proposes to sell with each acre of irrigable land sold by it out of said west portion of said ranch, and as appurtenant thereto, a right, in common with all other purchasers of irrigable land in said west portion of said ranch, to water from said Tujunga River, to irrigate said lands, at the rate of one miner's inch of water continuous flow to every five acres of such irrigable land and for all reasonable domestic uses thereon; and warrants that the right of such purchasers of irrigable land to such water shall be prior and preferred over all rights of all other persons and lands acquiring rights in said river, except the water right of the town of Monte Vista, and settlers along said river east of said ranch, as above described, but subject, however, to the terms and conditions of the contract for the delivery of said water hereinafter provided for.
>
> "Now therefore, said seller, at its own cost and expense, shall with all reasonable diligence, complete the construction of suitable dams, reservoirs, apparatus and piping system to collect and store all waters of said Tujunga River except 37 miner's inches belonging to the town of Monte Vista and water used by settlers as above described, and shall deliver so much of said water as may be required by the buyer and all other owners of irrigable land in said west portion of the Tujunga Ranch, not exceeding in quantity one miner's inch continuous flow for each five acres of irrigable land held by each of said persons, seriatim, in proportion to the number of acres of irrigable land so held by each, and at such regular intervals, and in such volume or head, and under such pressure, and at such point on the boundary line of the land of each buyer; or, if more than one lot is purchased by a buyer, at such point or points on the boundary line of each lot, as may be sufficient to properly irrigate all of said irrigable land without extra force, for the full term of fifty years from January 1, 1907, and thereafter for a further term of 50 years at the option of seller; and said seller shall also deliver to the buyer from said water supply system, at the same point of deliverance as provided for irrigation water, all water that may be required by the buyer on said premises for reasonable domestic purposes, at all times continuously during said term for 50 years; and the said buyer shall pay to the seller of all waters so delivered to him at the rate of one cent per miner's inch per hour, payable upon demand

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of seller, but a minimum rate of $1.25 per acre of irrigable land shall be paid by the buyer to the seller every six months from the date when irrigation and domestic water sufficient for the purposes herein intended first becomes available to the buyer hereunder, until the end of said term of 50 years, whether any water is required by the buyer or not, provided water is available. That the seller, in selling and contracting to deliver the water above described, may fulfill this contract from the source above described, or from such waters as may hereafter be developed by it in the Tujunga River territory or territory adjacent thereto, and that all of said waters shall be used upon the lands now known of record as the west portion of Tujunga Ranch, comprising about 4,000 acres of which 1,666 acres are understood, and hereby declared to be irrigable, except when there shall be available an amount of water in excess of one miner's inch continuous flow to every five acres of such irrigable land, and all water required for reasonable domestic purposes, which said excess the seller may divert and use on other lands. That upon notice by the buyer to the seller that said buyer requires water to be delivered to said premises hereunder, the seller shall cause a good reliable water meter to be attached to said supply pipe at the point of delivery and said seller may charge the buyer for each water meter so furnished the actual cost thereof, not exceeding $45.00 for each meter, and the actual cost of installing same, which said charges and each of them shall be paid by the buyer to the seller upon demand of the seller, and all of said charges shall attach and remain a lien against the particular lot for which water is measured through any such meter until paid."

In the brief submitted by James Donovan, counsel for Dan and William Clemmons, considerable attention is given to press the point that the Tujunga Water and Power Company does not own any water but that the waters of Tujunga Creek, which applicant claims, are riparian to the district containing 1,666 acres. The courts have decided that it is possible to divest lands of their riparian rights, and I can not agree with the contention of counsel that these rights are still vested in the land. We find large water companies in different parts of this State purchasing grants called riparian rights, from abutting property owners along a creek, and in order to prevent injunctions which would interfere with rights of appropriation, promoters have always found it expedient to extinguish riparian rights below the point of diversion. There are many cases in this State which could be cited, showing how the development of lands has been retarded by landowners who have consistently refused to part with their riparian rights and allow others to appropriate and divert the waters. It is needless to say that there is much undeveloped land in this State which will never be opened to settlement until the doctrine of riparian rights is modified.

Means must be provided for the collection and distribution of water and it is probable, in many cases, that the owners of the riparian lands

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would never combine and invest sufficient capital to construct a complete system for themselves.

In the case at bar, we find from the deeds in evidence that applicant purchased riparian and appropriated rights along Tujunga Creek and has retained the title to same, although it has granted to settlers a right to purchase water at certain specified rates.

The Commission is aware of the contention of the city of Los Angeles as to certain rights to the waters of Tujunga Creek and has mentioned in previous decisions the claims asserted. Further reference to that discussion is unnecessary at this time.

Under the deed from Tujunga company, a right was granted to buyers to irrigate the lands with water from Tujunga River, at the rate of one miner's inch to each 5 acres. A rate of one cent per inch per hour, with an annual minimum of $2.50 per acre, was established by applicant. The protestants to this application, believing that they possess a water right which they may lose if the minimum charge is abolished, are, in general, adverse to its removal. However, the Commission has received letters from some of the settlers who protest against paying the minimum for their acreage not under cultivation.

Having first in mind the fact that applicant is a public utility, we must apply the principle that the continued use of water determines the right to the use. Applying this, those who have used water will continue to enjoy the use, provided payments are made in accordance with the rules. Those who have never used water but who have been paying the annual minimum will not necessarily lose their right to water if minimum payments are discontinued, should water be available when demanded, after those making beneficial use of the water have been provided with their requirements.

Lands for which service has been contracted and payments made, but which have never taken water, must be given priority of right to demand that service when it can be given without detriment to lands where crops are previously established.

In the opinion preceding the order in Decision No. 2112 (North Moneta Garden Lands Water Company, for authority to increase rates, R. R. Decision No. 2112), occurs the following:

> "The Commission has no jurisdiction to compel the owners of lots in this section to pay for water which they do not use. Petitioner's counsel frankly concedes the point but asks authority for his company to receive payment from owners of unimproved lots if the latter desire voluntarily to make such payments to add to petitioner's revenue."

The party who will be most affected in this respect is the Eucalyptus Estates Company, which has enjoyed by contract a rate of 25 cents per acre per annum upon its holdings of some 800 acres of undeveloped

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but irrigable land. This company fears that it will lose its water right if their contract is set aside. There is no way in which their right to have water held in reserve for them can be recognized, and yet work out a plan to foster development of the territory. If the Eucalyptus Estates Company decides to pay the minimum per year as outlined in the order herein recommended, I do not see how their rights to water will be materially affected, *providing water is available when they get ready to use it.*

I will recommend in the order herewith, that each person desiring service be required to declare, on or before April 15th of each year, the number of acres upon which water is to be used and shall make payment at that time for one-half the minimum charge for such acreage. Thereafter, if desiring more water and if the company has sufficient supply, the settler may call for more than originally contemplated, increasing his payment. It is not possible for the Commission to fix a rate for the company in this case, depending entirely upon the amount that each consumer will use, as such use fluctuates considerably. It was said by some of the protestants that this would be proper, but a moment's reflection should convince any fair minded person that such a policy might result disastrously to both utility and consumers. A minimum payment must be fixed for each acre irrigated in order to provide the company with assured returns to cover the direct charges which occur whether or no any water at all is used. For this minimum charge there is a specified allowance of water. As will be hereafter shown, the necessary return to the company is determined to be approximately $6,000.00 per annum and one-half of this sum is the amount which I consider must be guaranteed by the 500 acres at $6.00 per acre, annually, to the company.

There will probably recur shortages of the water supply of applicant until storage dams are provided to impound part of the winter flood waters for summer delivery. Due to applicant's financial difficulties, its contemplated construction of a dam has been retarded and unless more revenue can be secured from the rates no improvement can be expected but, rather, poorer service conditions.

This proceeding was broadened to include service investigation at the request of some of the protestants. Witnesses at the hearing testified as to minor troubles, such as meters becoming stopped, delays in repairing leaks, etc., but on the whole, I think there is now small cause for complaint. However, service has not been what it should be, due both to the fault of the company and to the consumers. The last two years have been seasons of good rainfall and comparatively few complaints have come to the Commission regarding the inadequacy of the supply delivered. Most of the complaints have had to do with matters

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which were caused by the deferring of maintenance work by applicant which could have been partially eliminated if the company had enforced the collection of its bills and the consumers had been more willing to comply with this reasonable requirement.

The applicant presented a valuation of its property and the protestants engaged an engineer who spent a day in the field, made a valuation and report upon the system but who did not appear at any of the hearings. A valuation was submitted by the engineers for the Commission. A tabulation of the depreciated or present value of the properties has now been made, after prorating the depreciation as set up by the applicant.

Comparisons of Present Value.

Item	By applicant	By protestant's engineer	By protestants in their brief	By Commission's engineer
Intake works	$13,130	$3,113	$3,000	$8,000
24-inch redwood pipe	10,510	2,400	600	6,186
Steel pipe	11,620	9,041	9,900	14,223
Surveying		nil	nil	5,000
Legal expense		250	nil	4,100
Engineering	15,000	nil	nil	950
Johnson rights		nil	nil	5,000
Real estate	15,000	nil	nil	13,250
Development work	10,000	nil	nil	1,000
Teams, tools, etc.	1,000	300	200	
Meters	740	740	700	850
Rights of way		2,075	2,000	
Totals	$80,000	$17,919	$16,400	$58,559
Arbitrary deductions		2,300		
Net totals	$80,000	$15,619	$16,400	$58,559

There appears to be a remarkable difference of opinion as to the present value of applicant's system. The Commission's hydraulic engineers have examined the property before making the valuation and an analysis of the evidence shows that the amounts of "cost new" of the physical items do not show the great differences which appear on the present value totals. It is, therefore, a matter of how much the physical property has depreciated, and the impartial opinion of the Commission's engineers should be of greater weight than that of experts engaged to represent any faction in the controversy.

The items such as real estate, rights along the Tujunga River, legal expenses, etc., which have been incurred in developing the property, are as certainly to be considered as are the items of physical valuation. A utility must prepare in advance for anticipated increases in use of water but where development has been carried on with the idea in

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view of furnishing a larger tract with water, then such an expense is not entirely to be borne by the customers who may be in the system during the development period. It remains to determine what percentage shall be charged to the present consumers of the system.

After a thorough consideration of the items upon the value of which there may properly be some difference of opinion, and having in mind the testimony as to the extent of the ultimate project which was intended to be irrigated, I find that for the purposes of this investigation the sum of $15,000.00 can rightly be held to cover the part of the real estate, riparian right expense and legal expense which can be attributed to the development of the 1,666 acres. The total amount which I find to be the present value of the property of applicant, as specified is:

Intake works	$8,000 00
24" redwood pipe	6,186 00
Steel pipe	14,223 00
Real estate, legal expense, rights, etc.	15,000 00
Meters	850 00
Teams	300 00
Total	$44,559 00

It will be noticed that the Commission's engineers reported a valuation of $58,559.00, at the time of the hearing. From the evidence produced at the hearing, it has been found proper to allow only the $15,000.00 mentioned before, as the value to the 1,666 acres of the development cost. This eliminates $14,300.00 from our engineer's report. A sum of $300.00 has been added for the teams which the company owns and uses in the system. The net change in totals is $14,000.00, leaving the present amount as found for rate fixing purposes to be $44,559.00.

It was testified that about 500 acres were now under cultivation out of the 1,666 acres which are irrigable. On the basis that when three-quarters of a district has become settled a full return should be allowed the utility, we have approximately 1,250 acres as the criterion for a full return. Taking the 500 acres now developed and dividing by 1,250 acres we find that 40 per cent of the value of the system is properly to be borne by the present consumers, or approximately $18,000.00. Applying the same percentage to the allowance for depreciation there results a sum of approximately $770.00 to be covered in the rates.

Interest at 7 per cent on $18,000.00	$1,260 00
Annual depreciation	770 00
Total	$2,030 00

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Coming now to the expense incurred through the maintenance and operation of the system we have in evidence the following:

Maintenance and Operation Expense.

Item	Actual charges, 1914	Estimate as made by protestants	Estimate as made by Commission's engineers
Superintendent	$1,760	$1,350	$1,350
Labor	2,100	40	500
Material for repairs			500
Office rent			390
Phone	700	180	120
Office supplies		50	50
Taxes	600		600
Totals	$5,160	$1,620	$3,510

A serious flood caused an extraordinary expense in the year 1914, and the amount as shown on the books of the company for labor is $1,845.96 and material $1,033.66. A part of this is chargeable to deferred maintenance. There is also the expense of the hearings before this Commission. I shall add $400.00 to the above total of $3,510.00, to include these extraordinary expenses in the rates by way of amortization.

Taking together now the items which I consider chargeable in the rates, we have:

Interest at 7 per cent on $18,000.00	$1,260 00
Annual depreciation	770 00
Maintenance and operating expense	3,510 00
Amortization of extraordinary expense	400 00
Total	$5,940 00

I will now examine the records presented in order to show the deficit incurred by applicant during the past year.

Revenues—1914.

Metered water at 1 cent per 72 cubic feet, 8,317,584 cubic feet sold	$1,155 22
Minimum payments collected	401 50
Total from Hansen Heights and the Terrace	$1,556 72

Other districts brought some revenue to the company as follows:

Villa Vista tract	$216 40
Rock crusher	715 00
Miscellaneous users	167 30
Total	$998 70
Total receipts from all sources	$2,555 42

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There is some additional expense attached to the delivery of the water to the districts outside but I have shown the entire amount that applicant has collected, in order to demonstrate the deficit which is annually occurring.

The books of the company show uncollected accounts amounting to about $6,000.00. Such condition is evidence of poor management and has resulted in an injury to those who do pay their bills. As soon as this applicant will enforce its rules and collect its revenues without discrimination, then, and no sooner, will its financial condition improve, and in justice to all the Commission must insist that such discrimination as has heretofore existed in the collection of bills from consumers must be eliminated. For the collection of amounts now past due owing to the negligence of the Tujunga Water and Power Company, that company must resort to an action in the courts if such is found necessary, but as to service in the future consumers must realize that if their bills for water are not paid when due they may be requested to pay in advance, in default of which payment service may be disconnected.

During the winter when no water for irrigation is used, the domestic use of various customers amounts to 16 cents to 20 cents per month under the rate of 1 cent for 72 cubic feet. It is evident that it is not practical to send a collector out for such petit bills and the maintenance of service by even one man at $60.00 per month cannot be covered, were the bills all collected. There are about eighty families settled on the tracts. If the applicant will provide independent meters for each domestic service, I will recommend that a rate of $1.00 per month for domestic use not exceeding 800 cubic feet be fixed, and the excess of 10 cents per 100 cubic feet.

The land irrigated in the two districts under consideration is about 500 acres. The maximum allowance for water under the old contracts is 1 inch to 5 acres. Under the rule as established by the company, any one acre is entitled to a depth of approximately 3 inches over its area during each month. Assuming an irrigation period of six months there is, therefore, 18 inches of depth of water allotted to each acre. It is reasonable to assume this duty of water as the amount required to mature the average crop of this community. In fixing the minimum, I have taken one-third of this amount, or 6 inches in depth over the land, as the quantity which shall be paid for, whether used or not, finding that this amount is equivalent to 300 hour inches of water.

Taking all the preceding data into account, I will recommend that a rate of $6.00 per acre irrigated per year be fixed as a minimum charge for which any consumer will be entitled to receive 300 hour inches of water. Any excess used over the minimum shall be paid for at the rate of 1½ cents per hour inch (72 cubic feet).

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In submitting this opinion, I wish the applicant and the protestants herein to know that their briefs have been carefully reviewed and the material points have all been considered before submitting this opinion.

After full consideration of the testimony given at the hearing and upon a careful analysis of all the evidence produced, it is hereby found as a fact that the rates now being charged consumers by the Tujunga Water and Power Company are unreasonably low, and that the following rates are reasonable and just rates for the Tujunga Water and Power Company to collect from its consumers in Hansen Heights, Tujunga Terrace and districts adjacent thereto:

1. *Domestic use.*—A rate of $1.00 per month, minimum, for 800 cubic feet or less, and 10 cents per 100 cubic feet used in excess of 800 cubic feet.

2. *Irrigation use.*—A minimum rate of $6.00 per acre per year for each acre irrigated for which 300 hour inches of water will be allowed and 1½ cents per hour inch (72 cubic feet) for all excess water used over 300 hour inches.

I submit herewith the following form of order:

ORDER.

Tujunga Water and Power Company, a corporation, operating a water utility in Hansen Heights and Tujunga Terrace, near Los Angeles, having made application for an increase of rates for water used by those districts, and a hearing having been held and the final briefs having been submitted, and basing same upon the foregoing opinion and finding of facts,

It is hereby ordered that the following schedule of rates be established:

1. *Domestic use.*—A rate of $1.00 per month, minimum, for 800 cubic feet or less, and 10 cents per 100 cubic feet used in excess of 800 cubic feet per month. Meters to be furnished at expense of the utility.

2. *Irrigation use.*—A minimum rate of $6.00 per acre per year for each acre irrigated, for which 300 hour inches of water will be allowed, and 1½ cents per hour inch (72 cubic feet) for all excess water used over 300 hour inches.

It is further ordered that applicants for service shall file with the Tujunga Water and Power Company, on or before the fifteenth day of April of each year, a declaration of the number of acres upon which water will be used during the coming season, and pay, on or before the fifteenth day of April, the sum of $3.00 per acre for each acre so declared. Also, that on or before the fifteenth day of July of the same year, the second half of the minimum charge shall be paid to the company, making the total minimum of $6.00 per acre per year. Persons declaring and paying for such acreage as they desire to irrigate shall

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have precedence over others who may wish to take their chances with the water supply and do not make any advance payments.

It is further ordered that the above schedule be put into effect on and after July 15, 1915, and that for the season of 1915, the second half of the minimum of $3.00 per acre irrigated be and the same is hereby authorized to be collected, with the rate of 1½ cents per hour inch for all water used over 150 hour inches subsequent to July 15th. Any parties having made payments during the year 1915 for water not used but expected to be held for future use, shall have such payments credited to their accounts as against water bills to be contracted during the year of 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of July, 1915.

Decision No. 2582, grade crossing; not printed. See end of volume.

DECISION NO. 2583.

CHARLES P. GROGAN

vs.

CROCKER-HUFFMAN LAND AND WATER COMPANY.

Case No. 427.

Decided July 9, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Charles P. Grogan, complainant, having on July 7, 1915, made written request to this Commission that this proceeding be dismissed,

It is hereby ordered that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 9th day of July, 1915.

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DECISION NO. 2584.

IN THE MATTER OF THE APPLICATION OF CASTRO POINT RAILWAY AND TERMINAL COMPANY AND OF CHARLES VAN DAMME FOR AN ORDER APPROVING AN AGREEMENT TO GRANT A RIGHT OF WAY.

Application No. 1738.

Decided July 9, 1915.

Castro Point Railway and Terminal Company, owning certain property near Castro Point on the bay of San Francisco, applies jointly with Charles Van Damme for permission to enter into an agreement which provides for the construction by Van Damme of a wharf on the railway company's property to be used for a period of five years by the ferry system of Van Damme running between Marin and Contra Costa counties, at the end of which time it shall revert to the railway company subject to lease by the ferry system, also for the use by the ferry company of the right of way of the railway company running into Richmond. Application granted.

McCutcheon, Olney & Willard, by *F. P. Griffiths*, for Castro Point Railway and Terminal Company.

James M. Oliver, for Charles Van Damme.

A. S. Macdonald, Protestant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Charles Van Damme and Castro Point Railway and Terminal Company for authority to enter into an agreement for the use of a wharf, and the right of way connecting therewith, in the city of Richmond, Contra Costa County.

The railway company has condemned a certain parcel of real estate in the city of Richmond near Castro Point on the bay of San Francisco. At this point is also located the eastern terminus of a ferry operated by Charles Van Damme between Richmond, Contra Costa County, and Point San Quentin, Marin County.

The agreement which this Commission is asked to approve provides for the construction of a wharf by Van Damme on the property of the railway company. This wharf is thereafter to become the exclusive property of the railway company, but Van Damme is to be allowed five years' use thereof, together with the use of the right of way connecting the wharf with Scofield avenue, Richmond, approximately one-quarter of a mile distant.

It is further provided that at the end of five years Van Damme may renew the lease for an additional five years at a fixed monthly rental,

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based upon the earnings of the ferry line, but not to exceed $75.00 per month.

Van Damme agrees to maintain the wharf in repair, provide compensation and fire insurance and furnish a bond in the sum of $2,000.00 to insure the carrying out of the contract.

The railway company agrees to extend its line to the end of the wharf, and to build an embankment connecting the wharf with solid ground.

Cessation of ferry service for sixty consecutive days will entitle the railway company to cancel the lease.

A franchise for the construction and operation of this wharf was granted to Castro Point Railway and Terminal Company by the city of Richmond under Ordinance No. 255, dated March 25, 1912.

At the hearing of the application A. S. Macdonald, of the Richmond Wharf and Dock Company, protested against the granting of this application, upon the ground that the railway company did not have clear title to the wharf site. This land is held by the railway company as the result of a judgment in condemnation proceedings in the Superior Court of Contra Costa County. The matter is now on appeal to the State Supreme Court.

After a consideration of the evidence submitted by the applicants, I am of the opinion that this application should be granted, and I accordingly submit the following form of order:

ORDER.

Castro Point Railway and Terminal Company and Charles Van Damme having applied to this Commission for authority to enter into an agreement as hereinbefore set forth; and it appearing to this Commission that applicants' request is reasonable and should be granted,

It is hereby ordered that Castro Point Railway and Terminal Company and Charles Van Damme be and they are hereby authorized to enter into an agreement substantially of the form as set forth in Exhibit "B," attached to the original application herein.

The authority herein granted shall apply only to such agreement as shall have been executed on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of July, 1915.

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DECISION NO. 2585.

IN THE MATTER OF THE APPLICATION OF CARL F. SCHADER FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR THE ESTABLISHMENT OF RATES.

Application No. 1675.

Decided July 9, 1915.

Applicant applies for a certificate of public convenience and necessity authorizing the operation of a water distributing system in the unincorporated town of Calipatria and also to establish a schedule of rates for such system.

Held, That the present system is considerably larger than necessary to serve present consumers, a rate permitting of a return upon the entire system would be unjust at the present time. Certificate granted and schedule of rates established to become effective within thirty days.

Carl F. Schader, in propria persona.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Applicant alleges that public convenience and necessity require the construction and operation of a water system in the unincorporated town of Calipatria, Imperial County, and prays that the Commission issue a certificate of public convenience and necessity and establish rates to be charged for water for domestic use.

Applicant's principal business in Calipatria is the sale of the townsite forming part of sections 15 and 16, township 12 south, range 16 east, S. B. B. and M., and applicant, together with an unincorporated association known as the Imperial Valley Farm Lands Association, owns all of these lands not transferred to individuals. The tract above described has been subdivided into building lots, a number of which have been sold.

Water to supply the town is purchased from Imperial Valley Irrigation Company No. 3. A ditch extends from their canal to a settling reservoir at the outskirts of the town. The water is then pumped into tanks and then flows into the distribution system now serving some seventy connections.

A public hearing in this proceeding was held in Los Angeles on June 8, 1915. The book cost of the system as presented by applicant is $10,353.00, exclusive of real estate, which it is estimated has a value of $4,000.00. At the hearing H. V. Johnston, assistant hydraulic engineer of the Commission, submitted a valuation, evidencing estimated cost of the property as $11,046.00, plus $2,800.00 for real estate and

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stock in the Imperial Valley Water Company No. 3, a mutual company; and $330.00 as the annual depreciation. The income of applicant for 1914, as shown by his books, was $1,661.00. The Commission's hydraulic engineers have estimated applicant's annual operating expenses as $978.00 per annum. They also estimate that only one-fifth of the system is used at present. This system was constructed as an adjunct to and an aid in the sale of real estate, and has a present capacity to serve a much greater demand than is now supplied.

The system was obviously constructed to provide for complete development of the community and to attract settlers. Calipatria is a new community and may develop rapidly. For this reason I feel that the present consumers should not be charged with the burden of producing returns upon the entire investment and that the loss, if any, of operating the system should be borne as a part of the expense of marketing the lots until such time as the town is developed.

This Commission has discussed fully in a number of instances, and particularly in *City of Huntington Beach* vs. *Huntington Beach Company*, Decision No. 1730, and in *Rogers et al.* vs. *Sacramento Valley Westside Canal Company*, Decision No. 2483, the injustice of charging against present consumers a system built unreasonably beyond present demands.

In fixing rates for this system it is contemplated that the realty company will recompense the water utility for water used in sprinkling streets and for other public purposes. Until the town is incorporated the realty company, as promoter, is the one principally benefited by making the town more attractive to prospective purchasers of lots and is the only source from which rates for water used for public purposes can be collected.

I submit herewith the following form of order:

ORDER.

Carl F. Schader having applied to this Commission for a certificate that public convenience and necessity require the construction and operation of a system for the production and distribution of water to the unincorporated town of Calipatria, Imperial County, and for an order establishing the rates to be charged for water for domestic purposes, and a public hearing having been held and the proceeding herein having been submitted,

It is hereby declared that public convenience and necessity require the construction and operation by applicant of a public utility water system in the unincorporated town of Calipatria, Imperial County; and

It is hereby ordered that the applicant be and he is hereby authorized to put into effect, within thirty days from the date of this order, the

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following rates for water supplied for domestic purposes, which rates the Commission hereby finds as a fact to be just and reasonable:

Tenement buildings, lodging houses, or residences, 6 rooms or less, one toilet, one bath, and water for irrigating one lot not to exceed 60 feet x 150 feet in size	$2 00	per month
Each additional room	10	per month
Each additional bath, toilet or urinal	25	per month
Horses or cows, one	25	per month
Each additional horse or cow	15	per month
Automobiles, each	40	per month
Small stores and shops	2 00	per month
Hotels, for each room having running water, or bath	25	per month
For all other rooms	10	per month
Hotels, with dining room in connection, an additional charge of	4 00	per month
Restaurants and eating houses	4 00	per month
Business blocks not exceeding five offices	2 00	per month
Each additional office	10	per month
Stores, warehouses, butcher shops, confectionery shops, halls, billiard parlors, etc.	2 00	per month
Drug stores and bakeries	2 50	per month
Barber shops, one chair only	2 00	per month
Each additional chair	25	per month
Photograph galleries	2 00	per month
Laundries	4 00	per month
Public baths, each	1 00	per month
Public water troughs, each	1 50	per month
Steam boilers or gas engines, per horsepower	30	per month
Soda fountains, each	1 00	per month
Cotton gins, for not more than a six-stand gin	3 00	per month
For each additional gin	40	per month
Lime for building purposes, each 100 square yards plastered	50	
Each 1,000 brick laid	15	
For all purposes, per barrel lime	15	
Cement for construction work, each 100 square foot cement walks	20	
Concrete curb, per lin. foot	20	
Graded streets, water used in settling streets, per 100 linear feet	1 00	
Fire hydrants, each	1 00	
Meter rates, 0 to 2,000 cubic feet, each 100 cubic feet	25	
2,000 cubic feet up, each 100 cubic feet	15	
Minimum 600 cubic feet	1 50	
For irrigating lots, per 100 square feet	01	

For water used for municipal purposes, meter rates shall apply unless otherwise noted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of July, 1915.

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DECISION NO. 2586.

IN THE MATTER OF THE APPLICATION OF PEOPLES WATER COMPANY FOR REORGANIZATION.

Application No. 1531.

Decided July 10, 1915.

Peoples Water Company, being in a position where a reorganization of its financial affairs becomes imperative, submits for the approval of the Commission a plan which provides for the incorporation of a new company and the issuance by said company of $8,640,000.00 par value of common stock and $8,400,000.00 face value of bonds. The bonds it is proposed to exchange at face value for the underlying bonds and notes secured by bonds of the Peoples Water Company. Bonds of the Peoples Water Company to be exchanged for stock on a basis of 11 shares of stock for each $1,000.00 bond and the $2,000,000.00 par value of preferred stock outstanding to be exchanged for $400,000.00 par value of the new stock. A number of applicants bondholders, not in accord with the plans as outlined, contend the reorganization should be deferred pending the possible formation of a water district to purchase this property, another objection is that the stock for which they are expected to exchange their bonds is not as acceptable as an issue of second mortgage bonds, to which objection the Commission points out that its authorizations are merely permissive and do not compel bondholders to accept the conditions under which it authorizes an issue of securities, also that if this utility was reorganized and placed on a sound financial footing, such action would not in any way hinder its transfer to a water district.

Held, In finding a fair and reasonable value of this utility upon which an issue of securities may be authorized the Commission considers its properties and rights under five heads, namely, lands, physical structures, water rights, going concern and rights of way and after a detailed review of the evidence submitted in connected therewith, the sum of $14,100,000.00 is fixed for the purposes of this application, though this value is not held up as a basis upon which rates may be established or for the purposes of sale.

Land values: Applicant's witness submits a value of $7,558,731.95 for land, including office buildings in Oakland and Alameda, basing his findings on a considerable number of recent sales of adjacent properties and after a careful examination of the evidence on this subject, this amount is allowed.

Water rights: Applicant has developed and has available 18,000,000 gallons of water daily for consumers upon which its engineers place a value of $100,000.00 per million gallons and also a value of $50,000.00 per million gallons on estimated output of undeveloped sources, or a total of $2,750,000.00 for both undeveloped and developed supplies. Considering this claim, it is held that as considerable money and effort are required to secure this supply of undeveloped water upon which applicant places a value, and as at present such supply does not exist, no allowance can be made therefor, and though applicant has presented a plan with reference to developed supply to which consideration will be given, its probable actual cost of extinguishing riparian rights below its dams and developing other rights will be given weight and a fair allowance made covering its water supply.

Physical structures: That in finding a value under this head, no established set of rules can be laid down to be followed in all cases, that original cost, repro-

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duction new and reproduction value less depreciation are methods which act merely as guides in determining a fair value, but which can not in themselves establish a true value, without considerable modification. As regards applicant's claims for an allowance of $900,000.00 under the head of paving over mains, that no allowance will be made under this head except to cover cost of paving laid subsequent to the laying of mains.

Going concern: After a review of the various claims under this head, *held*, "That where it can be shown that as a matter of actual cost a company has expended a given sum of money to obtain its business and this was done economically within a reasonable time and with good business judgment, the resultant business is of value to the company to the extent of its expenditures to obtain it." That as no reliable data can be had in the present case, consideration will be given to the fact that applicant has a large and growing business, is serving an ever growing community steadily producing more business and allowance for going concern will be made accordingly.

Rights of Way: Applicant has grants covering approximately 30 miles of right of way though at present is using only 15 miles. That as a number of these grants have lapsed so that it has not a present continuous right of way, an allowance of $50,000.00 covering right of way actually in use at the present time is made.

Held, Considering the value established for the property and rights of applicant, the application should be granted, provided, that such order shall not become effective until there shall have been filed a copy of the articles of incorporation of the proposed new company and a copy of its deed of trust and a supplemental order issued approving same.

W. E. Creed and *A. H. Tasheira*, for Peoples Water Company.

E. S. Heller and *Jesse H. Steinhart*, for Reorganization Committee.

Sullivan & Sullivan, and *Theo. J. Roche*, for F. C. Havens.

Charles S. Wheeler for Rudolph Spreckels and bondholders represented by him.

James F. Peck and *Walter D. Cole*, for certain bondholders of Peoples Water Company.

R. L. Dunn, appearing as a stockholder of Peoples Water Company.

John J. Earle, for city of Oakland.

Hugo D. Newhouse, for common stockholders.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Peoples Water Company for an order authorizing the transfer of its property to a corporation to be hereafter organized, and for an order authorizing said new corporation to issue stocks and bonds.

In connection with this application, and as a part thereof, there is submitted a specific plan for the retirement of existing forms of indebtedness and capital stock of Peoples Water Company, and the issuance in lieu thereof by the new corporation, of stocks and bonds.

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In Application No. 1110, by Peoples Water Company, this Commission made an order, Decision No. 1561, dated June 4, 1914, as follows:

> "Peoples Water Company shall proceed forthwith to formulate and present to this Commission a plan for reorganization."

In pursuance of this direction, and also because of the default by Peoples Water Company in the payment of a considerable portion of its indebtedness, this application is presented.

The capitalization and financial condition of applicant is as follows:

Peoples Water Company bonds. (Held in ownership.)		
Thirty year bonds under deed of trust dated January 2, 1907, of a face value of		$7,400,000
Underlying bonds:		
Contra Costa Water Company first mortgage 5 per cent bonds, under deed of trust dated November 1, 1894, of a face value of	$2,000,000	
Oakland Water Company first mortgage 5 per cent bonds, under deed of trust dated May 1, 1899, of a face value of	1,500,000	
Alameda Artesian Water Company first mortgage 5 per cent bonds, under deed of trust dated February 1, 1900, of a face value of	600,000	
East Shore Water Company first mortgage 5 per cent bonds, under deed of trust dated June 15, 1900, of a face value of	500,000	
Contra Costa general mortgage 5 per cent bonds, under deed of trust dated May 5, 1903 (these bonds are also known as Contra Costa second mortgage bonds), of a face value of	1,000,000	
Total		$5,600,000
Peoples Water Company notes. (Secured by Peoples Water Company bonds.)		
Notes of various denominations of a par value not exceeding (Secured by Peoples Water Company general mortgage bonds amounting in par value to $6,000,000.)		$2,300,000
Preferred stock.		
Twenty thousand shares of preferred stock of a par value of		$2,000,000
Common stock.		
One hundred and eighty thousand shares common stock of a par value of		$18,000,000

Peoples Water Company is a consolidation into one corporation of four separate water companies, and the bonds hereinabove denominated "underlying bonds" are bonds issued by each of these companies before the consolidation.

The underlying bonds matured January 1, 1915, and remain unpaid. The interest coupons due in July, 1914, on the underlying bonds and on Peoples Water Company bonds are unpaid. The notes of Peoples

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Water Company, secured by its bonds are, except as to $35,000.00 out of $2,300,000.00, past due.

Upon the filing of this application, the engineers of this Commission made an inventory and appraisement of the physical properties of this company, with the exception of the real property, and also filed a report and valuation of water rights, easements and exploratory expense.

In the hearing conflicting views and theories of valuation were carefully and vigorously presented by the various attorneys representing the interested parties, and by careful examination and cross-examination of witnesses and argument, these conflicting views and theories have been brought sharply to my attention.

Mr. Charles S. Wheeler urges that this entire water plant should be sold to the public of the communities served by it, and that there is reasonable probability of such a sale in the near future; that, therefore, consideration should be given to a delay or postponement of any reorganization in order that it may be determined whether or not the public will purchase in the near future. On the other hand, Mr. W. E. Creed, representing the Peoples Water Company, and Mr. James F. Peck, representing a large number of Peoples Water Company bondholders, hold that it is vitally necessary that a complete and adequate reorganization of the financial condition of Peoples Water Company be brought about at once, not only to safeguard the interests of the owners and creditors of this company, but to permit of adequate enlargement of this water system and the development of additional water supply.

I am impressed with the unanimous testimony of the engineers in this proceeding to the effect that this water system is now being drawn upon by consumers for approximately its capacity to supply water, and that in the very near future, and especially if there be a recurrence of dry years, there may be a shortage of water.

The testimony of the engineers is to the effect that there is an adequate additional supply which can be made available upon the expenditure of several million dollars, and that this development should be commenced at once. In view of this situation I do not see how we can justify any delay in putting this company in a position to continue its present service to the public and in addition to prepare to safeguard this service and to largely increase it for new consumers who will undoubtedly, from time to time, be added.

I firmly believe that the best solution of this problem would be the purchase of this system at a reasonable price by the public, but I do not believe that it would be proper to speculate on a probable or possible purchase and delay all action looking toward the doing of the things which are necessary as above specified. Furthermore, I do not see why a conservative reorganization of this company's financial condition will in any degree impair or hinder the public's privilege of purchasing

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this system. In fact, I am inclined to think that such a reorganization would expedite, or at least make more simple, the public acquisition of this property.

There is another serious danger lurking in the situation, and that is the ability of bondholders to institute foreclosure proceedings at any time. The evidence in this case shows that the determination of conflicting interests as between classes of bondholders and stockholders would not be simple, and it is safe to conclude that if foreclosure proceedings are commenced this property will be in the courts for a long period of time, during which it will have little, if any, credit, and inevitably the service now given to consumers will deteriorate and, of course, no adequate programme for additional water supply can be initiated or carried out.

We are urged to clearly indicate whether or not we approve or will make orders to carry out the plan presented, or in the event we do not approve this plan, that we indicate upon what basis we will authorize the issuance of stocks and bonds in a corporation to be organized to take over the properties of Peoples Water Company.

Ordinarily I would hesitate to advocate that the Commission take a position with regard to a plan of the kind proposed in advance of its being agreed upon by all necessary parties, but as it is sincerely urged upon us that our pronouncement may help to bring about a prompt agreement upon some plan among the various interested parties, which agreement will be impossible if they are left to negotiate among themselves, and furthermore, in view of the fact that ultimately the consent or authorization of this Commission must be had to the issuance of stocks or bonds upon any plan of reorganization, I shall recommend that we, as far as possible, indicate what issues of stocks and bonds will meet with the approval of the Commission.

I shall consider, therefore, the value of applicant's property and the so-called reorganization plan as proposed, together with suggestions for the modification of said plan or the substitution of a different plan therefor.

The principal elements of value claimed by applicant are:

1. Lands.
2. Physical structures.
3. Water rights.
4. Going concern.
5. Rights of way.

Mr. Frank J. Woodward testified on behalf of applicant that in his opinion the 45,705.92 acres owned by it, including the improvements on Alameda office buildings and Oakland office building only, were of a present market value of $7,456,985.00, and the property sold under

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contract had a present market value of $101,746.95, making a total value of $7,558,731.95.

Mr. W. M. Wells, an assistant engineer of this Commission, examined the appraisal of Mr. Woodward, and while he did not examine the lands as completely as Mr. Woodward, he made a report which was submitted in evidence, in which he finds that the valuations of Mr. Woodward are fair. In this report he cites certain sales which were made of property adjacent to that of applicant, which he holds sustain his conclusion.

Mr. Rudolph Spreckels, represented by Charles S. Wheeler in this proceeding, produced as a witness Mr. Edward P. Vandercook, who made an appraisal of a part of the land of applicant and finds the present market value of the land which he valued to be $3,690,264.00. The wide difference of over $2,345,700.00 between these two estimates can be only partly explained by a difference in the judgment of these two witnesses as to the character of the land, there being a material difference in value placed by both upon farming or tillable land as compared with hilly and precipitous land.

Both Mr. Woodward and Mr. Vandercook impress me as witnesses of integrity and large experience in the matter of handling real estate, both for themselves and for others. However, Mr. Woodward appears to be more in touch with recent sales of property than Mr. Vandercook, as it appears that Mr. Vandercook's activities in real estate on the east side of the bay have not been so great in recent years as prior to 1906, whereas, Mr. Woodward seems to have been active in real estate up to the present time. Furthermore, Mr. Woodward's opinion of value is sustained by a large number of actual sales of property and also to a large extent by the testimony of two other witnesses, H. M. Bush and R. N. Burgess. These witnesses were called by the Commission at the suggestion of Mr. Wheeler and each proved to be a man of considerable experience in the sale and purchase of real property in the vicinity of applicant's property in the country districts outside of Oakland, Berkeley and Richmond.

Mr. Bush cited a large number of sales occurring within the last two or three years, some of them of very recent date, and in some instances the price paid was less than the value fixed by Mr. Woodward for reasonably similar adjacent property. Mr. Burgess also cited a large number of sales. Within the last few years he has purchased 35,000 acres of land in Contra Costa County in the general vicinity of the foothills surrounding Mt. Diablo. This land consisted of hilly, inaccessible land, rolling land, orchard and farming land. He testified that he paid an average of $157.00 per acre for all of this land. This price may to some extent be compared with the value of the Peoples Water

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Company land fixed by Mr. Woodward at an average of $102.00 per acre.

After a careful examination of the testimony and exhibits, I am of the opinion that the estimate of Mr. Woodward of $7,558,731.95 fairly indicates the present market value of applicant's land.

The water rights of this company consist of rights acquired by prescription through the sinking of wells on land owned by the company, and the pumping of water therefrom for a period of over five years. Approximately 9,000,000 gallons per day is produced in this way. The company also has collecting reservoirs called the Temescal and San Leandro. Here the company owns a part of the watershed and the land in the reservoir site, and has erected substantial dams which impound the water. It has also extinguished by purchase some of the riparian rights below these dams. These reservoirs collect water representing a capacity for delivery of 8,000,000 gallons per day. The balance of the company's water is obtained by tunneling and the extinguishment of some riparian rights on streams below these tunnels. Some suggestion was made in this proceeding that the company's title to all of its water might not be secure, but there is no evidence upon which to base a finding to that effect.

Mr. J. B. Lippincott, an engineer called by applicant, gave his opinion that the water rights of applicant under which water is now being obtained are worth $100,000.00 per million gallons per day. As the Peoples Water Company now has available for its consumers approximately 18,000,000 gallons per day, this would give a value of $1,800,000.00. He also places a value on undeveloped resources of water supply or undeveloped water rights of $50,000.00 per million gallons daily.

Mr. P. E. Harroun, another engineer called by applicant, testified that by the expenditure of approximately $9,000,000.00, 19,000,000 gallons per day of additional water could be developed from the present sources of supply of Peoples Water Company. This estimate of Mr. Lippincott would mean an additional water right value of $950,000.00, or a total water right value of $2,750,000.00.

Mr. Lippincott based his estimate of value upon a consideration of a number of sales of water made to mutual companies in the southern part of the State and also upon a decision of Judge Farrington of the Federal Court in a case involving the rates of Spring Valley Water Company and the subsequent adoption of the opinion of Judge Farrington as to the value of water by engineers for the city of San Francisco, also upon sales of water made in the vicinity of San Francisco and other places in the State of California.

Having considered all of this data, Mr. Lippincott arrives at the value above set out as his best effort to place a value upon water.

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It will be noted that Mr. Lippincott places a value upon water rights entirely separate from the value of land. He suggests that were he valuing the land of the company as well as the water he would place a market value upon reservoir and water bearing land, having in view their use for residence, farming and ordinary purposes, and in addition thereto, would place a value upon the water produced or impounded thereon. It is also apparent that Mr. Lippincott makes no distinction between the character or kind of a water right or ability to develop water but classes the ability of a water company to exclusively and uninterruptedly develop and distribute a given amount of water as a right or rights and places a value upon this right upon the basis of the amount of water produced.

We can dispose of the estimated value of the undeveloped water by calling attention to the fact that a very large sum of money must first be invested before this water is made available, and until this money is invested and the water is actually produced, I do not think this water can be given a value as though it were an existing thing today. The possibility of developing this water exists, it is true, but it can only become available when money and effort are expended upon it.

As to the value of the water rights under which the present actual production of water is made I have given earnest and careful consideration to Mr. Lippincott's method of arriving at value and also to all other suggested methods but I cannot find in any of them a satisfying basis upon which to fix a definite value for these water rights.

It has been specifically determined by the United States Supreme Court that the appropriation of water by a public utility from a running stream creates a property right, but our courts nowhere have pointed out any basis upon which the value thereof is to be determined. I believe Mr. Lippincott has put before us a perfectly sincere and carefully thought out basis for determining value and if we were not dealing with a public utility service which, of course, involves the control of both value of plant and return thereon, his method would be very persuasive, but, of course, no strict comparison can be made between the value of water which is not under public control and that which is. However, the evidence of Mr. Lippincott is valuable and has been given very careful consideration. On the other hand, the investigation made by Mr. Hawley, the hydraulic engineer of this Commission, as to the probable cost of extinguishing riparian rights and developing other rights has been given weight. I shall add to the value of this plant an amount which, in my judgment, will fairly represent the value of this water supply.

The only appraisals introduced in evidence in the way of written reports were those of Mr. Hawley, H. T. and C. L. Cory who joined on one report and J. H. Dockweiler.

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Mr. Allen Hazen was a witness and gave his opinion of values, paying particular attention to going concern values.

The Cory report is in great detail and covers not only physical structures but in addition, water rights, easements, real estate and working capital. C. L. Cory was a witness and testified to his opinion of the value of the franchise of this company.

The testimony and reports which cover the same ground and which may be compared in detail are those of the Corys, Dockweiler and Hawley. The Cory report is stated to be based on the reproduction cost as of the present, using unit cost based upon an average of the past seven years, and H. T. Cory also presented estimates of original cost and of the cost of reproducing under original conditions at present prices of labor and materials.

The Hawley report and testimony is based on the reproduction as of the time of acquirement or construction, using unit prices based upon an average of the past recent years but constructing, however, under the methods of the time of construction.

The Dockweiler report and testimony is based upon the reproduction new method, using such records of unit cost as were available.

The total value of the physical structures arrived at by these engineers may be tabulated as follows:

Cory	(Undepreciated)	$9,843,470
	(Depreciated)	7,874,776
Hawley	(Undepreciated)	7,860,816
	(Depreciated)	5,245,168
Dockweiler	(Undepreciated)	8,133,607
	(Depreciated)	5,539,971

It will be noted that there is only $294,803.00 difference between the present values found by Hawley and Dockweiler, whereas there is $2,629,608.00 difference between Cory and Hawley.

Analyzing the different results obtained by Cory and Hawley, it is apparent that the principal difference is found in an allowance by Cory of something over $945,000.00 for paving over mains and services, which paving was actually done long after the pipes of the Peoples Water Company were laid, and which cost the company nothing, but which Cory claims for the company under the reproduction new method. Mr. Hawley allows about $40,000.00 for paving over mains which was actually paid for by the company.

This difference between Hawley and Cory requires a consideration of whether or not the Peoples Water Company is entitled to a value represented by the cost to reproduce this plant new now less depreciation. If this is the real measure of value of this company's plant, it is obvious that every legitimate expense the company would be put to in building its plant now must be allowed as a part of value.

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Mr. Creed on behalf of applicant urges that the reproduction new less depreciation method is the proper method of finding value although he admits that a modification of the result obtained must be made to accord with the circumstances of each particular plant.

I believe it would serve a useful purpose to briefly discuss at this point the several methods of arriving at value which should be considered.

We are here concerned with finding the value of the entire plant of Peoples Water Company. Value, as the term is here used, is a determination of what this plant is worth commercially. This commercial worth might be tested with comparative ease if this property or similar properties were freely bought and sold in the open market, because it might fairly be held that the commercial value of a given thing is the price at which it can be disposed of under normal conditions. It is, of course, obvious that a public utility water plant is not and in the very nature of things can not be freely bought and sold upon the open market. In fact the transfers of such properties where they are made usually occur in reorganization of the finances of such companies or in the absorption of one company by another. In the first instance, the price paid is arrived at by the determination or agreement of the stockholders and security holders, in nearly every instance the ownership of the property remaining largely the same, so that these transactions are not conveyances of the properties to new parties who pay in any sense a market price therefor.

In the second class of cases where one company absorbs another, the sale or transfer is always made to a company which for strategic or economic reasons is located with relation to the company absorbed in some peculiar way so that the price it may pay for the acquired plant is no indication of what might be paid by others not in the same relation. It may, therefore, fairly be said that there is no market for the sale of a plant such as the Peoples Water Company. There are, of course, elements going to make up this plant which could be sold if severed from the rest, for instance land, and on this element a determination can be had as to market value by considering the sales of similar land adjacent thereto.

With ordinary commercial property a value may be arrived at by considering the earning power of such property and capitalizing the same, but here the earning power is fixed by the same body, the Railroad Commission, which fixes and determines the value of the plant, and in determining the earning power of the plant, the value of the plant must be taken into consideration. Hence the value of the plant must first be established and upon this valuation rates are fixed which determine the earning power of the plant.

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Realizing this situation, various methods have been put forward of determining the value of a public utility plant. These methods include a determination of the original cost of the plant by inspecting the records of the company, the opinion of engineers as to the original cost based upon a reproduction of the plant as of the time when it was constructed under the methods then existing but applying present day unit prices, an opinion as to the cost of reproducing the plant at the present time less depreciation representing the deterioration found now to exist in the plant as it is.

I hold that these methods are merely guides to a determination of value and it can not be said that any one of these methods may be selected and followed strictly to a result which produces, without modification, a true value. For instance, the method perhaps most favored of recent years is reproduction new less depreciation, but a very brief consideration of this method will at once make it apparent that in many instances serious modifications of the result obtained must be indulged in to avoid absurd and unjust results.

For instance, where a plant has been constructed many times larger than is necessary to supply the needs of its consumers it would be necessary to modify the value arrived at by reproducing this property new less depreciation because, obviously, rates could not be fixed which existing consumers must pay based upon a large excess of plant not used in their service.

I believe the reproduction new method is valuable as a guide in arriving at value but I believe it to be only a guide, and I further believe that merely because this method results in this case in a reproduction cost for paving over mains of over $900,000.00 is no reason whatever persuading this Commission to allow that sum or any other sum for this item which admittedly cost this company nothing.

Mr. Hazen, page 586 of the transcript, states:

> "Why I do not consider this paving is worth $628,000.00 (his estimate of the cost to pave over mains under the reproduction new theory) that belongs to the city * * * What I mean to say is the cost of reproduction less depreciation is $628,000.00 more than it would have been if the streets in the district were not paved."

It is true that Mr. Hazen later in his testimony in general terms claims that the fact that the mains of this company have been paved over would cause the purchaser to pay more for the plant, still he does not explain this in sufficient detail to enable an intelligent judgment to be passed thereon. It seems reasonable to suppose that the paving over mains would mean an added cost to the company in taking up and laying down pipe, hence it is difficult to see how this adds to value of plant or business.

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I do not criticise the engineers for presenting to the Commission an estimate of the cost of this paving for I am in accord with Mr. Creed's contention that engineers should follow a given method as consistently as possible, having the privilege, of course, of pointing out what, in their opinion, should modify the result arrived at, and always placing before the Commission a true and consistent statement of any given method so that the Commission itself will be in a position to intelligently consider modifications of the results arrived at.

It has been urged at times that the true measure of value is the actual investment or original cost. But in addition to the fact that it is usually impossible to obtain accurate data as to original cost of the properties which have been established and operated for a number of years, there is the further difficulty that if the original cost showed extravagant expenditure or expenditure made largely in excess of that which was necessary because of some interests of the constructors, aside and apart from the utility itself, it must be modified to a point where it is made reasonable. Furthermore, we have the important element of appreciation in land values to deal with, and it has been held by our courts that a utility is not bound by the original cost of its land. I do not mean to say that original cost is not to be considered and given weight, but I do say that original cost if it can be obtained does not of necessity fix the value of the plant.

It may be stated of Mr. Hazen's testimony that his estimate of the value of this plant of between $17,000,000.00 and $18,000,000.00 is based upon his judgment of its value and when asked to give the items going to make up this sum he made it very evident that his items were not definitely valued. For instance he says, at page 589 of the transcript, "because when I got through I did not, of course, use the sum of the items as the value of the plant. I took these other things into consideration."

I think it must be apparent that when an engineer appears before this Commission and states a figure in dollars and cents as the value of a given plant, this opinion must be given little weight by the Commission unless the engineer submits sufficient detail of how he arrived at this figure to enable the Commission to determine whether or not his judgment is well founded. I shall, therefore, strike out the item of paving over mains as an element of value in this plant and allow only that paving which the company has actually paid for.

The Cory report contains no item for going concern, but this does not mean that the Corys hold against going concern value. Mr. Hazen testified to a value of $1,600,000.00 for going concern of this plant. He arrives at this figure by taking the gross return of this company for 1914 and adding it to value upon the theory that if this plant were reproduced new it would take at least a year to persuade consumers

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to take water to the amount that the present consumers are now doing and the company would not receive this income during the time between the completion of its plant and the time when it would have all of the consumers using all of the water under present conditions.

The result is produced under the reproduction method, but I call attention to the fact that Mr. Hazen follows the strict reproduction method up to a certain point and then abandons it, otherwise he could not possibly produce the result claimed. The strict reproduction method assumes, of course, that all of the present consumers exist in Oakland without a water supply, that the plant would be built as it now exists, including all service connections put in by the company (it will be noted that the company now claims as a part of its value these very service connections). It also assumes that the consumers exist with their houses built, and, of course, with their pipes laid on their premises. This being true, it must be further assumed that the company's service connections are connected with the pipes of the consumers because the cost of making this connection is claimed by the company as a part of its plant value. Another assumption must be that present consumers are educated to the use of water which they now use and have the number of faucets, bathtubs, etc., using water which they now have. It is true Mr. Hazen argues that the people would have to be educated to the use of water to the extent that they now use it and that this education would take some time, hence the use of the company's water would commence at a less amount than at present and gradually increase, but the moment he takes this position he departs from his strict reproduction theory and if he assumes that people would have to be educated to the use of water then I submit that he does not place the people in their present location with their present houses and homes and gardens, etc., but at least considers these consumers as in some condition different than at present and as using less water.

The moment Mr. Hazen departs from the assumption that the present consumers would start off with the full use of water as at present he can find no logical stopping place until he has removed the consumers entirely and then he would be reproducing a plant new capable of serving 60,000 consumers with not a single consumer available, and I think Mr. Hazen would admit that with this removal his reproduction value of such a plant with no consumers would have to be very seriously modified, because it would, of course, appear that the plant was enormously overbuilt. Therefore, under the reproduction theory, it appears to me that all that would be necessary after the completion of the plant would be that the cocks be turned on when the company would come into the immediate enjoyment of its present income. Hence, there could be no going concern value based upon the cost to bring about the present consumption of water.

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Going concern value, as urged by Mr. Creed on behalf of the company, is entirely disassociated from any idea of good will value, but is in his judgment a value which a public utility plant has because it has customers, hence an established business, and has a reasonable assurance of the continuance of that business, the uncertainties of getting that business are removed and is to be distinguished from the value of a plant which has no consumers or only a few consumers and whose future business success is more or less uncertain. With this general statement of Mr. Creed's position I agree, but the difficulty arises in determining what this value is or what measure to apply to arrive at this value.

I believe that where it can be shown that as a matter of actual cost a company expended a given sum of money to obtain its business and this was done economically within a reasonable time and with good judgment, the resulting business is of value to the company to the extent of its expenditure to obtain it. Of course, it will be urged that in the past the company has received from consumers full compensation for this expenditure, either by adding the same to its operating expenses or by obtaining a large profit from its operations.

Because of the absence of reliable data it can not be determined what this company has spent to obtain business, nor can it be determined whether it has been compensated in the past for such expenditures as it may have made.

In determining the total value of this property I shall give consideration to the fact that it is a going concern with a large number of consumers and a large gross annual income, and that it serves a populous and growing community, which is steadily producing more business for this company.

H. T. Cory testified that in his judgment his written report, based on the reproduction of physical structures as of the present time, presents practically the same result as he would have arrived at using Mr. Hawley's method of reproducing structures as of the time when they were constructed, but applying present day prices for labor and material, with the exception of three items, paving over mains and the development at San Leandro and Temescal. In other words, Mr. Cory presents for comparison with Mr. Hawley's report, his written report with the exception of these three items.

Mr. Hawley's costs before applying overhead are $7,025,636.00. Cory's figure, not including paving over mains, is $7,579,727.00, which gives a difference of $555,991.00. A part of this difference is made up of $25,000.00 allowed by Cory for parking and gardening, and not allowed by Hawley; $62,400.00 represents an amount included by Cory,

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represented by a charge of $1.00 for going back and fixing up the street surface over services after two or three weeks' time. This was not allowed by Hawley.

Mr. Hewson, on behalf of the company, testified that while employed by the company he knew of 20,000 services being repaired in this way prior to the time when the company entered into an agreement with the city, whereby the city makes the repair and the company pays the city $1.00 for each repair, and he further testified that he was satisfied that all of the trenches dug by the company to put in service connections had this supplemental or finishing fill put in by the company several weeks after the first fill. Mr. Hawley has allowed for the cost of paving over service connections put in by the company, and obviously, as to the number of connections where he has made this allowance, no additional sum should be allowed. The paving has been allowed for in something over 2,000 service connections. This leaves about 60,000 service connections where no paving was cut, but where, it appears from the testimony, supplemental filling or surfacing occurred, for which I believe it is reasonable to allow a sum for this supplemental fill of $1.00 per service connection, making a total of $60,000.00 for this item.

Mr. Cory is higher by $177,937.00 than Mr. Hawley on the important mains from San Leandro to Oakland and from Alvarado to Oakland. The cost of a part of the Alvarado main may be fairly compared with the cost of the San Pablo-Berkeley extension. It appears that Mr. Cory has adopted a higher unit cost for the Alvarado and San Leandro mains than for the San Pablo-Berkeley extension. Mr. Hawley has adopted a lower unit cost for the Alvarado and San Leandro mains than for the San Pablo-Berkeley extension. It does not appear that the installation of the San Leandro and Alvarado mains would be any more difficult or any more costly than the San Pablo-Berkeley extension, and, therefore, it is not clear why Mr. Cory adopts a higher unit cost for the former than he does for the latter. Mr. Dockweiler uses the same unit cost for the San Pablo-Berkeley extension and for a part of the Alvarado main which is directly comparable.

In view of the above, I can not sustain Mr. Cory's unit cost on the Alvarado and San Leandro mains.

Mr. Cory places a value upon 83 wells not in use of $41,000.00. Mr. Hawley allows nothing for these wells on the ground that they were drilled between 1885 and 1888 and were never used, and, in his judgment, never will be used. I am inclined to sustain Mr. Hawley on this item because it seems a fair conclusion that if wells have not been used for thirty years they have, in the judgment of the management of the company, no part in its operation. Mr. Hawley has allowed a value for other wells, even though they are not now in use, because they may

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have been put down for the purpose of exploration and hence may properly be considered a development cost.

In addition to the above, Cory is higher by $98,206.00 on the cost of wells than Hawley. Cory arrives at his unit prices by an examination and consideration of the cost data of Peoples Water Company relating to certain wells and then applies these unit prices to all of the wells which were drilled, regardless apparently of any difference in conditions under which the wells may have been drilled. On the other hand, Hawley applies unit prices, obtained from the data of the company, to the wells to which this data is directly applicable and as to other wells for which there is no cost data in the records of the company, Mr. Hawley adopts unit prices by considering the data in the records of the company applicable to wells drilled and also data obtained from a large number of other public utility water companies, and he also considers the conditions under which wells were drilled for which there is no actual cost data. Mr. Dockweiler is higher than Mr. Hawley by $26,240.00, but there is nothing in his report or in his testimony to indicate in detail how he arrived at this cost.

However, as the drilling of wells is subject to many unforeseen contingencies and as engineers admit that it is practically impossible to accurately estimate the cost of a given well without a detailed knowledge of all of the experience in drilling such wells, I am inclined to add to Mr. Hawley's estimate $30,000.00 with a view to covering unexpected and undiscoverable costs which the company may have been put to in drilling these wells.

A vigorous attack was made upon Mr. Hawley's overhead on physical structures on the ground, among others, that he had not given consideration to unforeseen expenses in construction, but which expenses had occurred. Our particular attention is called to the fact that in the case of *Thomas Monahan* vs. *San Jose Water Company*, Mr. Hawley set up an overhead in excess of the overhead which is allowed in this proceeding. He allowed an average of 18 per cent in the San Jose case and 12 per cent in this proceeding. However, on the witness stand Mr. Hawley explained that in this proceeding he had added to unit prices an average of 4 per cent for items which in the San Jose case he carried in overhead, thus, in effect, allowing within 2 per cent of the same relative amounts in each case.

Mr. Hawley explained that these two plants are not really comparable as the conditions surrounding the construction in the one case are not the same as in the other.

An examination of the two reports and sustaining data, bears out Mr. Hawley's contention.

Our attention was also called to the overhead fixed by Mr. Hawley in the application of the city of San Diego to fix rates upon a portion

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of its water system. He allowed in that case a higher average overhead than he does here, but he calls attention to the fact that the San Diego property consists of reservoirs, transmission mains, filter stations, etc., at long distances from supply points and built under conditions which would involve greater uncertainties and more risk, resulting in larger expenditures for contingencies, engineering and administration than we are here dealing with. Peoples Water Company system has a greater proportion of construction, such as distribution pipe lines, etc., which involve a lesser amount of expenditures which go to make up overhead.

Realizing that Mr. Hawley's unit prices are made up as a result of a careful, detailed and extensive investigation of actual costs of doing similar work in all parts of the State, and believing that in this proceeding he has allowed practically the highest costs which he has found for similar work, I do not believe his unit prices should be disregarded.

Rights of way were valued by Mr. Woodward for the company at $183,000.00, which price was adopted by Mr. Cory, and Mr. Hawley valued these same rights of way at $50,000.00. The rights of way of this company in use consist of about fifteen miles over privately owned property, the company being granted the right to lay its pipe underground and to enter upon the land to repair and replace pipes, etc., this right of entry, however, being subject in practically all instances to the prior right of the owner of the land to the use of the surface. These rights of way vary from 4 feet in width to grants without a stated width. The company obtained grants of about 30 miles of right of way but has only used 15 miles thereof, and Mr. Woodward places a value upon the entire 30 miles. On the other hand, Mr. Hawley places a value only upon 15 miles, or that which is in use.

It appears that many of the rights of way which have been unused for a considerable period have lapsed under the terms of the grant and inasmuch as the lapsing of a considerable number of these grants would result in there being no continuous right of way, I believe it is entirely fair to consider as valuable only that right of way of the company which has actually been used, and it strikes me that Mr. Hawley has been liberal in fixing a value of $50,000.00 upon this item.

Depreciation as reported by the engineers in this proceeding amounts to a large sum and there is serious disagreement between the reports of Cory and Hawley as to the total. Hawley uses the straight line method and arrives at a total of $2,615,648.00. He took each class of property, determined what its probable life is and depreciated in an amount equal to the difference between the total value represented by the proportion of its life already lived. Cory in his written report does not depreciate the property but on the witness stand he gave his opinion that the property was in about 80 or 82½ per cent of new

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condition. Applying 80 per cent to his reproduction value gives a depreciation of $1,968,694.00. This makes a difference between Hawley and Cory on depreciation of $646,954.00.

Mr. Hawley in a supplemental report also estimated depreciation on the sinking fund basis, using 4 per cent return on the depreciation fund. This resulted in a depreciation of $1,426,659,00 and deducting this from his reproduction value of $7,860,816.00 gives a present value of $6,434,157.00.

Dockweiler used the straight line method and gets a depreciation of $2,593,636.00.

Mr. Hawley has depreciated the value of plant to a considerable extent because, in his judgment, many of the mains of this company are smaller than the present needs of consumers demand and future needs would make imperative. His theory is that where there are small pipes which must be replaced by larger pipes because of added consumption of water it can not be held that full value should be given the small pipes because they will not live out their full life in use, but will either be left in the ground or taken up and replaced before they become useless through age.

It is my opinion that in determining the value of a plant, methods of arriving at depreciation are valuable only as they indicate the present condition and the probable future life of the structures. I have carefully considered all of the evidence with relation to depreciation and shall be influenced in my decision as to the total value of this plant on my judgment based upon this evidence as to the probable future life of this system.

After a careful consideration of all of the evidence in this case, I have come to the conclusion that the fair value of the property of the Peoples Water Company at this time is the sum of $14,100,000.00.

It must be borne clearly in mind that this value is determined on for the purposes of this proceeding only. It may very well be that a proceeding before this Commission to fix the just compensation which the public should pay for this plant upon taking it over would result in a different figure.

Furthermore, in a rate fixing inquiry a determination would be necessary as to what part of this plant, particularly land, was used and useful in the service of consumers. This being an inquiry to determine upon an issue of stocks and bonds, the entire property owned by the company has been valued, but, of course, it does not follow that all of this property should be charged against consumers in a rate fixing inquiry. Nor does it follow that all of this property would be taken over by the public on condemnation proceedings.

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Coming now to a consideration of the proposed reorganization plan we are asked to authorize the issuance of capital stock and bonds in the following amount:

Common capital stock	$8,640,000
Bonds	8,400,000

The trust deed securing the payment of these bonds is to provide for the issuance of a total of $12,000,000.00 face value, the balance of $3,600,000.00 to be retained in the treasury for the purpose of adding betterments and facilities to the plant in the future.

Considering the value hereinabove placed upon the property of applicant, this proposed capitalization is not unreasonable and is not out of harmony with the action of this Commission in its attitude toward capitalization in other cases.

There is apparently a very considerable difference of opinion among the various bondholders, security holders and stockholders of this company as to what form of capitalization should now be issued.

The reorganization plan contemplates the sale of all of the property of Peoples Water Company to a new corporation, which corporation is to issue stocks and bonds in certain amounts to the present bondholders and stockholders and creditors of the Peoples Water Company.

It is proposed to exchange underlying bonds par for par for the new bonds to be issued and also to give new bonds to the note holders who are secured by Peoples Water Company bonds as collateral, the exchange to be made on a basis of face of notes for face of bonds. The Peoples Water Company bonds are to be exchanged for stock of the new company on a basis of 11 shares of stock for each $1,000.00 bond.

There is now outstanding $2,000,000.00 par value of preferred stock of Peoples Water Company, and it is proposed to exchange this stock and give therefor $400,000.00 par value of stock in the new company. F. C. Havens is to receive $100,000.00 par value of the new stock for services and for the release of whatever equity he may have as a holder of the stock of Peoples Water Company.

Various attempts have been made to bring about an agreement among the bondholders and stockholders of this company upon some definite plan of reorganization, but it has been found impossible up to date to bring them together. The owners of a considerable number of Peoples Water Company bonds urge that the proposed reorganization plan is unjust to them, because, among other reasons, the stock which they would receive would not be as valuable as some other representation of interest in the new company. They urge that the Commission authorize the issuance to them in exchange for their Peoples Water Company bonds of second mortgage bonds, the lien of which may be made subject to the lien of the bonds issued to the present underlying bondholders and note

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holders, and also to the bonds retained in the treasury for development purposes.

Evidence was introduced in the hearing segregating, or attempting to segregate, the property underlying each of the several bond issues, and there is a serious difference of opinion among the attorneys who appeared in this case as to the legal effect of so-called "after acquired property clauses" found in the several trust deeds securing the issue of the various bonds and also as to the legal effect of a clause in the deed from the Contra Costa Water Company to Peoples Water Company, the language of which binds the Peoples Water Company to the payment of all of the obligations owed by the several companies to their several bondholders.

The representatives of the Peoples Water Company bonds insist that there is a large amount of property upon which their bonds are a first lien to the exclusion of the underlying bonds, and that the apparent conclusion of the reorganization committee that of necessity first and full consideration must be given to the underlying bonds is erroneous. I do not find it necessary, nor do I consider it my province in this proceeding, to decide this legal question, but I am impressed with the showing made of the probability that the obligations owed the underlying bondholders must be met first and that the overlying or Peoples Water Company bondholders would be relegated to the equity in the property left after the claims of the underlying bondholders have been satisfied.

Of course, our action in this proceeding is permissive only, that is to say, the Commission has power to declare what capitalization it will authorize to be issued and for what purpose the proceeds thereof shall be used. Hence while the authorization of this Commission may be persuasive, it can not be enforced upon anybody. The various bondholders, creditors and stockholders of this corporation must determine for themselves whether or not they will proceed under the authorization of the Commission. But attention is called to the fact that the action of this Commission will finally be controlling, because whether this company be reorganized by agreement or whether it go through foreclosure, no stocks or bonds can be finally issued without its authorization.

Our consideration of this matter must be the reorganization of this company's finances upon a basis which will permit it to continue to serve present consumers efficiently; also to add to its plant and to go forward with the necessary development of additional water supply to adequately serve consumers who are being taken on from time to time, and finally, consideration may be given to the equitable rights of the owners and creditors of this property.

The proposed plan of reorganization and the issuance of stocks and bonds thereunder will leave this company in a healthy financial con-

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dition, both as to the present and future, with the exception that I believe the proposed trust deed is unduly restricted in respect to the possible issues of bonds for development purposes. It will be remembered that the engineers have testified that to double the supply of water would involve the expenditure of about $9,000,000.00, and the reorganization plan submitted by applicant contemplates only the possible issuance of $3,600,000.00 face value of bonds; when the issue would be closed and if more money was needed an underlying bond issue might be required. I believe the trust deed should provide for about $15,000,000.00 of bonds. Also I believe that consideration should be given to having the articles of incorporation of the new corporation make it possible to issue more than $8,640,000.00 par value of stock, because it may be necessary to do a part of future financing with stock. I leave it to applicant whether it will be wise to provide for the possible issue of preferred stock.

Another objectionable feature in the proposed plan is the provision that directors of the new company should in part be selected by bondholders. I believe that the stockholders should have all of the power and control to which their ownership entitles them, and I do not believe it will be a healthy condition where bondholders are given rights of control which properly belong to the stockholders.

Mr. John S. Drum on the witness stand agreed that this suggestion was sound, and I believe there will be no objection to the elimination of this proposal.

The proposal to issue bonds under a second mortgage, which bonds would be exchanged for Peoples Water Company bonds instead of stock, would not, if carried out, result in a company with as sound a credit and as much possibility of economical financing as the one which is proposed. Certainly if it were now being proposed to organize a new company to begin the business of serving the people with water no one would seriously urge the issuance of these second mortgage bonds in preference to stock.

I do not believe the proposal to issue stock in exchange for Peoples Water Company bonds is of necessity inequitable. If Peoples Water Company bondholders look to the remainder of the property after underlying bondholders have been satisfied, then any representation of interest which gives them the equity in this property over and above the claims of the underlying bondholders is in essence fair.

In view of the fact that if they become stockholders these overlying bondholders will receive all of the net earnings of this company over and above the fixed charges, etc., and in the event of a sale of the property will receive the price paid therefor after the then bondholders and creditors have been satisfied, it can not logically be said that it is more just to give these overlying bondholders a second mortgage upon the property which they would own directly if they were stockholders.

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I recommend that the application be granted, and that Peoples Water Company be authorized to sell and convey all of its property, real, personal and mixed, to a corporation to be hereafter organized, in exchange for the stocks and bonds of said new corporation, as set out in the application and exhibit attached thereto. Provided that the stockholders shall not be restricted in their complete enjoyment of all usual rights, and that provision be made in the trust deed for additional bonds for development purposes.

I submit herewith the following form of order:

ORDER.

Application having been made by Peoples Water Company for an order authorizing the transfer of its property to a corporation to be hereafter formed, and for an order authorizing the issuance of stocks and bonds, and a public hearing having been had and the Commission being fully apprised in the premises,

It is hereby ordered by the Railroad Commission of the State of California that Peoples Water Company is hereby authorized to transfer and convey all of its property, real, personal and mixed, to a corporation to be hereafter organized in consideration for the issuance and delivery by said new corporation of bonds which shall be a first lien upon all of its property to an amount not to exceed $8,400,000.00 face value, and said bonds shall bear interest not to exceed 6 per cent per annum, and as further consideration, there shall be issued by said new corporation in exchange for said property, common capital stock in an amount not to exceed $8,640,000.00 par value.

Said stock and said bonds, or the proceeds thereof, shall be used to pay off or cancel all of the indebtedness which is a lien upon any of the property of Peoples Water Company, and also all of the promissory notes of the Peoples Water Company which are now secured by Peoples Water Company bonds. Said property of Peoples Water Company to be transferred to the new corporation free and clear of all encumbrance except such encumbrance as is represented by bonds issued by itself in part payment for the property.

Provided, that this order shall not become effective nor shall any transfer of property occur hereunder or any stocks or bonds be issued by virtue hereof until there shall have been submitted to the Commission, and its approval obtained upon, the articles of incorporation of the corporation which is to take over the property of Peoples Water Company, and the trust deed under which said new corporation is to issue the bonds hereinabove mentioned.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of July, 1915.

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Decisions Nos. 2587, 2588 and 2589, grade crossings, not printed. See end of volume.

DECISION NO. 2590.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided July 13, 1915.

Allen Chickering, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL ORDER.

It is hereby ordered that the order heretofore made in this proceeding on June 30, 1915, be and the same is hereby amended to include the following:

The Commission hereby finds that the money to be procured by the sale of the bonds and notes, herein authorized to be issued, is reasonably required for the purposes specified in said order, and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

DECISION NO. 2591.

GRIDLEY WATER USERS ASSOCIATION ET AL.

vs.

SUTTER BUTTE CANAL COMPANY, GRIDLEY LAND AND IRRIGATION COMPANY, CALIFORNIA IRRIGATED LAND COMPANY, IRRIGATED LAND COMPANY OF CALIFORNIA, AND W. H. GILSTRAP.

Case No. 426.

Decided July 13, 1915.

Complainants petition the Commission to compel Sutter Butte Canal Company to take over and operate about twenty miles of laterals, and the evidence showing that as Ditches Nos. 1, 2 and 4 are at present operated by the Gridley Land and Irrigation Company, which company claims title thereto,

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the Commission can not direct that the Sutter company take them over, such portion of the complaint dismissed. Ditches Nos. 3 and 6 are now being operated by the Sutter company and as Ditch No. 5 is at present being successfully operated by patrons receiving water therefrom, there appears no necessity for directing that the Sutter company take it over, complaint accordingly dismissed.

W. E. Duncan, Jr., for Complainants.

Henry Ingram, Isaac Froham and *W. H. Carlin*, for Sutter Butte Canal Company.

A. H. Hewitt, for Gridley Land and Irrigation Company and W. H. Gilstrap, Defendants.

Walter H. Linforth and *P. L. Benjamin*, for Irrigated Land Company of California, Defendant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

Complainants are the owners of land in Butte County. These lands are irrigated with water obtained from the main canal of Sutter Butte Canal Company, and distributed through a system of laterals. These laterals are seven in number and aggregate about twenty miles. The complaint asks this Commission to order Sutter Butte Canal Company to permanently take charge of, maintain and operate all of these laterals.

The seven laterals which are involved in this complaint are more particularly described as follows:

1. Colony No. One (1) lateral or main branch ditch.

Commencing at a point on the west bank of "Main Butte County Canal" near the northeast corner of southeast quarter (S.E. $\frac{1}{4}$) of section five (5), township eighteen (18) north, range three (3) east, M. D. B. and M.; running thence westerly about three quarters ($\frac{3}{4}$) of a mile; thence southwesterly about one-half ($\frac{1}{2}$) of a mile; thence southerly about two (2) miles, making a total length of approximately three and three-quarters ($3\frac{3}{4}$) miles.

2. West Branch of Colony No. One (1) lateral or main branch ditch.

That certain irrigation ditch commencing at a point on the Colony No. 1 ditch at the north line of lot thirty (30) in Gridley colony; thence westerly and northerly to the west line of the right of way of the Southern Pacific Railroad Company, said west branch of Colony No. 1 ditch being about one-half ($\frac{1}{2}$) mile in length.

3. Colony No. Four (4) lateral or main branch ditch.

That certain irrigation ditch commencing at a point on the west bank of "Main Butte County Canal" near the center of section twenty-nine

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(29), township eighteen (18) north, range three (3) east, M. D. B. and M.; thence running southerly about one-half (½) of a mile; thence southwesterly about three-fourths (¾) of a mile; thence westerly about one-fourth (¼) of a mile; thence southwesterly about one (1) mile; thence a little south of west about two (2) miles; thence southerly about one and one-half (1½) miles. Said Colony No. 4 ditch being about six (6) miles in length.

4. Colony No. Three (3) lateral or main branch ditch.

That certain irrigation ditch commencing at a point on the west bank of the "Main Butte County Canal" near the center of the northwest quarter (N.W. ¼) of section twenty-nine (29), township eighteen (18) north, range three (3) east, M. D. B. and M.; thence running westerly about three-quarters (¾) of a mile; thence southerly about three-eighths (⅜) of a mile; thence westerly about one-half (½) of a mile. Said Colony No. 3 ditch being one and five-eighths (1⅝) miles in length.

5. Colony No. Five (5) lateral or main branch ditch.

That certain irrigation ditch commencing at a point on the west bank of the "Main Butte County Canal" near the northwest corner of section nine (9), township seventeen (17) north, range three (3) east, M. D. B. and M.; thence westerly about one-quarter (¼) of a mile; thence running southerly about one (1) mile; thence southwesterly about one-half (½) of a mile; thence southerly about one-half (½) of a mile. Said Colony No. 5 ditch being about two and one-quarter (2¼) miles in length.

6. North Branch of Colony No. Four (4) lateral or main branch ditch.

That certain irrigation ditch commencing at a point on Lateral No. 4 near center of section thirty-one (31), township eighteen (18) north, range three (3) east, M. D. B. and M.; thence running westerly about one and five-eighths (1⅝) miles; thence southerly about one-half (½) mile. Said north branch of Colony No. 4 ditch being about two and one-eighth (2⅛) miles in length.

7. Lateral No. Six (6) ditch.

That certain irrigation ditch commencing at a point on the "Main Butte County Canal" and extending to a point on the north line of the northwest quarter of section seven (7), township seventeen (17) north, range three (3) east, M. D. B. and M.; a distance of approximately four (4) miles.

The Commission is asked to order Sutter Butte Canal Company to take over, maintain and operate these laterals. The Sutter Butte Canal Company in its answer denies that it owns these laterals or that it is in any way obligated to maintain and operate them, contending that

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its obligation as a public utility is confined to supplying water through its main canal, and that it never has and is under no obligation to distribute the water beyond its main canal.

The answer of Gridley Land and Irrigation Company states that that company owns and operates all of the laterals described in the complaint other than Colony No. 3 ditch, Colony No. 5 ditch and Lateral No. 6 ditch. Gridley Land and Irrigation Company claims that these laterals were originally constructed by Irrigated Land Company of California and California Irrigated Land Company and were thereafter conveyed to Gridley Land and Irrigation Company.

Obviously, if these laterals are owned by Gridley Land and Irrigation Company, this Commission can not make an order, such as is requested in the complaint, that Sutter Butte Canal Company take over, maintain and operate these laterals. Considerable evidence was introduced with reference to the title to these laterals, complainants contending that the title rested in Sutter Butte Canal Company. Gridley Land and Irrigation Company just as vigorously claimed that it owned these laterals. Sutter Butte Canal Company also claimed that the ownership was in Gridley Land and Irrigation Company.

The fact is that the Commission finds Gridley Land and Irrigation Company in possession of these laterals, other than the three above mentioned, and is actually engaged in operating them under claim of ownership.

I believe it is not for this Commission to determine where the title to these laterals actually rests. Gridley Land and Irrigation Company, which claims ownership and is actually operating these laterals, is, of course, a public utility and subject to the jurisdiction of the Commission in the operation of these laterals. The Commission can not, however, order Sutter Butte Canal Company to take over and maintain the laterals which Gridley Land and Irrigation Company claims to own and is operating. As to these laterals, therefore, the complaint will have to be dismissed.

Of the remaining three laterals, namely, Colony No. 3 ditch, Colony No. 5 ditch and Lateral No. 6 ditch, I believe the record is clear that the obligation to maintain and operate Colony No. 3 ditch and Lateral No. 6 ditch rests upon Sutter Butte Canal Company. This company has in the past voluntarily taken over and assumed the management and control of these two ditches. The Commission is advised that the Sutter Butte Canal Company is at present continuing to operate these two laterals, and so there is no occasion for an order directing them to do so.

With reference to Colony No. 5 ditch, there is practically no evidence in the record. I feel, therefore, that I can not make any finding one way or the other with reference to the obligation to maintain and

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operate this lateral. The Commission is advised that the settlers have in the past and are now continuing successfully to manage this lateral themselves. Under these conditions it would seem, therefore, that there is no necessity of making any finding at this time as to the company or person upon whom the obligation to maintain and operate this lateral rests.

The complaint in this proceeding also asks the Commission to direct Sutter Butte Canal Company to enlarge Colony No. 4 ditch and Colony No. 5 ditch. There is no evidence at all introduced by complainants with reference to this part of the complaint, and the Commission is accordingly not in a position to make any order with reference to this matter.

For the reasons set forth in this opinion, I recommend that the complaint be dismissed, and submit herewith the following form of order:

ORDER.

This matter having come on regularly for hearing and the Commission being duly advised in the terms,

It is hereby ordered that the complaint in this proceeding be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

DECISION NO. 2592.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A FIRST AND REFUNDING MORTGAGE, AND FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF FIRST AND REFUNDING MORTGAGE BONDS.

Application No. 1436.

Decided July 13, 1915.

Southern Sierras Power Company applies for permission to issue $4,146,000.00 face value of bonds which application is later amended to request permission to issue bonds of a face value of 85 per cent of the value of its properties, this would amount to an issue of $3,667,732.51 of which it is proposed to use $2,500,000.00 to retire a like amount of applicant's outstanding bonds, $300,000.00 to retire bonds recently authorized by the Commission, $70,000.00 to retire a like amount of bonds of the Lytle Creek Power Company, the balance, or $797,732.51 face value, to be sold at 90, proceeds to be used to pay off portions of applicant's indebtedness.

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Held, In connection with this application a review is made of the contracts entered into between applicant and the Nevada California Power Company by which applicant secures energy at a very favorable rate, which reflects a very satisfactory balance in its net returns, and to secure to it these conditions in the future authorization conditioned upon the guarantee by The Nevada California Power Company of the interest and principal of the bonds herein authorized. Applicant authorized to issue $3,668,000.00 face value of 6 per cent 50-year bonds for the purposes as applied for.

Charles F. Potter, for Applicant.

Albert Lee Stephens, W. B. Mathews, Howard Robertson and *Wm. B. Himrod*, for the City of Los Angeles.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by The Southern Sierras Power Company for authority to execute a mortgage of its properties, and for authority to issue $4,146,000.00 of bonds.

This application was consolidated with Application No. 1391 for hearing. In Application No. 1391 The Southern Sierras Power Company petitioned for authority to issue $300,000.00 of its first mortgage 6 per cent 25-year bonds. On February 27, 1915, this Commission issued its order (Decision No. 2175) upon Application No. 1391. Thereafter, on March 19, 1915, this Commission issued a supplemental order (Decision No. 2244) upon Application No. 1391, authorizing The Southern Sierras Power Company to issue $300,000.00 of bonds as requested.

Reference is hereby made to the orders of this Commission upon Application No. 1391 for a detailed description of the properties of The Southern Sierras Power Company, its assets and liabilities and earnings.

In the application under consideration herein, No. 1436, The Southern Sierras Power Company requests the approval of this Commission of its proposed first and refunding mortgage to Los Angeles Trust and Savings Bank and The International Trust Company of Denver, trustees. This mortgage is dated January 1, 1915, and a copy has been filed in connection with these proceedings and marked Exhibit "B."

This mortgage is of the so-called "open end" type. No fixed limit is placed upon the amount of bonds which may be issued under this indenture. The bonds are to be designated "first and refunding 6 per cent gold bonds." They will run for a period of fifty years, maturing January 1, 1965. It is proposed that they shall be issued in denominations of $1,000.00, $5,000.00 and $10,000.00, or such multiples thereof as the board of directors of the applicant may direct.

The first lot of bonds are to be known as Series "A," and the total of this series shall not exceed $5,000,000.00. The bonds will be callable

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at 103. A sinking fund is provided to begin in 1920 and to consist annually of ¾ of 1 per cent of the aggregate par value of all bonds outstanding; the sinking fund to be payable out of the net earnings of the corporation.

The Series "A" bonds are to be appropriated for the following purposes:

1. To refund the company's first mortgage 6 per cent 25-year gold bonds.
2. To refund bonds of Lytle Creek Power Company.
3. To discharge outstanding indebtedness.
4. To reimburse the company for money expended from income.
5. To acquire property and to provide for additions and betterments, etc.

It is provided in the indenture that after a complete appraisement of the properties of The Southern Sierras Power Company, bonds to the aggregate par value of 85 per cent of said appraisement may be issued, and that the balance may be issued from time to time as prescribed in the mortgage.

In case of default in the payment of principal or interest, the trustee is required to take action upon the request of the holders of one-third of the bonds, and upon the request of the holders of a majority of the bonds in case of any other default. In any foreclosure proceeding, the holders of a majority of the bonds shall control.

In the application as originally presented to this Commission, it was proposed to sell the bonds herein requested to be issued at 90 per cent of their face value and use the proceeds for the following purposes:

$2,700,000 00	of bonds to retire $2,500,000.00 of outstanding bonds of applicant.
324,000 00	of bonds to retire $300,000.00 of bonds of applicant which it proposed to issue under Application 1391.
78,800 00	of bonds to retire $70,000.00 of bonds of the Lytle Creek Power Company.
1,043,200 00	of bonds to be used for the purpose of retiring and paying off obligations of The Southern Sierras Power Company to system corporations, banks, etc.
$4,146,000 00	total.

The applicant later modified the form of its application, requesting authority to exchange its new first and refunding bonds par for par for the $2,500,000.00 of bonds outstanding, and for the $300,000.00 of bonds which it proposed to issue in Application No. 1391 and for the $70,000.00 of bonds of the Lytle Creek Power Company.

Subsequently the applicant submitted a further modification of its application, asking that it be granted authority to issue bonds equal in amount to 85 per cent of the cash cost of its properties. At the

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same time it revised its own figures of the cash cost of these properties by subtracting certain items to which attention was directed in the orders of this Commission upon Application No. 1391. Accordingly the applicant submitted as the cash cost of these properties a figure which it asserts corresponds with the cash cost as heretofore determined by the auditors of this Commission. The applicant gives this figure as $4,190,389.24. To this the applicant adds an item for cash disbursed for development account and preliminary exploration in the sum of $124,590.18, making a total of $4,314,979.42.

The applicant asserts that this is the cash cost of its properties up to November 30, 1914.

While the auditors of this Commission, in Application No. 1391, made certain reports upon the cash investment in these properties, there has been no final finding by this Commission as to the original cost of these properties.

However, if we assume the applicant's figure of $4,314,979.42 to be correct, the present request for authority to issue bonds equal to 85 per cent of this amount would call for an authorization to issue $3,667,732.51 of bonds.

We may, therefore, summarize the application as amended, as follows: To issue $3,667,732.51 of bonds and to use the proceeds as follows:

$2,500,000.00 of bonds to be used to retire a like amount of applicant's outstanding bonds		$2,500,000 00
$300,000.00 of bonds to be used to retire bonds authorized in this Commission's order upon Application No. 1391		300,000 00
$70,000.00 of bonds to retire a like amount of bonds of Lytle Creek Power Company		70,000 00
Total refunding	$2,870,000 00	
$797,732.51 of bonds to be sold at 90 per cent of face value for the purpose of paying a portion of applicant's indebtedness to system corporations, to banks, etc.		797,732 51
Grand total	$3,667,732 51	

The applicant has listed its indebtedness to The Nevada California Power Company at $995,584.01. This corporation is controlled by the same interests which control the applicant, and the sum represents moneys advanced to The Southern Sierras Power Company to assist it in constructing its electric plant.

The Southern Sierras Power Company owns water rights and hydro-electric plants on Bishop Creek, Inyo County, a steam plant in San Bernardino, and serves portions of Inyo, Kern, San Bernardino and Riverside counties with electric energy. Applicant has filed a revised statement of its earnings and expenses for the calendar years 1913 and

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1914, and an estimate for the year 1915. These statements are as follows:

	1913	1914	1915*
Operating revenues	$285,389 82	$461,612 34	$578,203 82
Operating expenses	207,722 42	189,340 71	173,315 31
Deductions from income	853 48	14,609 08	3,287 73
Net operating revenues	76,813 92	257,662 55	
Non-operating revenues	3,830 30	4,039 88	1,046 15
Total net revenues	80,644 22	261,702 43	402,646 93
Interest, etc.	151,383 32	189,392 98	224,212 74
Adjustments			202 80
Net profit	†70,739 10	72,309 45	178,576 99

*Last seven months estimated.
†Deficit.

The applicant points out that under this showing there will be available net earnings equal to nearly twice the total interest charges the company will be required to pay if bonds are authorized as herein requested. The company states that total interest charges, all kinds, for the year 1915, will amount to approximately $224,000.00, with over $400,000.00 to meet such charges. This is a noteworthy showing for a corporation organized so recently as 1911, and operating with long transmission lines in a field that requires development.

However, this showing of earnings requires a certain degree of explanation as it is in part due to a favorable system of contracts with The Nevada California Power Company, heretofore referred to as a corporation owned by interests practically identical with those which control the applicant. The Nevada California Power Company operates chiefly in Nevada; has a large established business and has undertaken to assist the applicant to reach a stage of financial stability. At present the bonds of The Southern Sierras Power Company are guaranteed by The Nevada California Power Company.

The relationship between the two companies, in so far as it would affect the borrowing capacity and the earnings of the applicant, may be summarized under four contracts.

1. The guarantee contract, under the terms of which The Nevada California Power Company guarantees the payment, both as to interest and principal, of the bonds of The Southern Sierras Power Company.

2. The "operating" contract. Under the terms of this contract The Nevada California Power Company furnishes electric energy to The Southern Sierras Power Company, and payment is made therefor by The Southern Sierras Power Company on the following basis:

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From the gross earnings of The Southern Sierras Power Company from the sale to the public of electric energy for light, heat and power purposes there is deducted—

(*a*) The operating expenses of The Southern Sierras Power Company, including taxes and the operating cost incurred at all generating plants belonging to either of the parties for the generation of electric energy transmitted and sold to customers of The Southern Sierras Power Company.

(*b*) All interest charges of The Southern Sierras Power Company, including bond interest and interest on its floating indebtedness.

(*c*) An allowance for depreciation to be estimated by a designated engineer.

The balance is then divided on the basis of the amount of power used as follows:

If the amount of energy taken by The Southern Sierras Power Company shall not exceed 3,500 kilowatt continuous service, 40 per cent of the surplus revenue, after the payment of the items designated above under sections *a*, *b* and *c*, shall go to The Nevada California Power Company, and 60 per cent to The Southern Sierras Power Company; when the amount of electric energy taken by The Southern Sierras Power Company shall be between 3,500 and 7,000 kilowatt continuous service, 50 per cent of the surplus shall go to each company; and when the amount of power taken by The Southern Sierras Power Company shall exceed 7,000 kilowatts, the surplus shall be divided upon the basis of 60 per cent to The Nevada California Power Company, and 40 per cent to The Southern Sierras Power Company.

This contract calls for a total supply of electric energy not to exceed 10,000 kilowatts. The contract is dated September 1, 1911, and has a life of twenty-five years.

3. The power plant contract. This contract provides that the power plants, known as plants No. 5 and No. 6, of The Southern Sierras Power Company, located on Bishop Creek, shall be operated by The Nevada California Power Company. Additional agreements in regard to these plants provide that The Nevada California Power Company shall figure the gross revenue applicable to these plants by taking the amount of kilowatt hours produced at the average price received by The Nevada California Power Company for its electric energy in the State of Nevada; that it shall deduct therefrom the cost of operating and maintaining said plants, and that the net sum then remaining on this basis shall be divided, 60 per cent thereof to The Nevada

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California Power Company and 40 per cent to The Southern Sierras Power Company.

This contract is dated January 1, 1913, and runs for a period of five years, but may be terminated upon sixty days' notice by either party.

4. The San Bernardino steam plant contract. This agreement provides that The Nevada California Power Company shall pay such proportion of the total expense of maintaining and operating the steam plant of The Southern Sierras Power Company at San Bernardino, as the hydroelectric development on Bishop Creek owned by The Nevada California Power Company shall bear to the total hydroelectric development of both The Nevada California Power Company and The Southern Sierras Power Company on Bishop Creek. It is further provided that such expense shall include depreciation and 7 per cent interest on the reproduction value of the San Bernardino steam plant, but not the operating expense in excess of the cost of keeping the "steam plant floating on the line."

For the purposes of this contract the reproduction value of the San Bernardino steam plant has been figured at $400,446.00, and the depreciation at $7,854.00 per annum. This agreement became effective in July, 1914.

It is apparent, therefore, that these agreements have been entered into for the purpose of augmenting the net revenues of The Southern Sierras Power Company.

The applicant has submitted a statement to this Commission showing that of its gross revenue of $285,389.82 for 1913, the sum of $99,983.16 was derived from The Nevada California Power Company; and that of its gross earnings of $461,612.34 in 1914, $107,119.00 was derived from The Nevada California Power Company. It would appear also that The Nevada California Power Company had relieved the applicant of a portion of its operating expense.

The applicant has submitted statements showing that it received from The Nevada California Power Company as compensation in connection with its steam plant in San Bernardino, the sum of $19,580.67 in 1913 and $29,700.42 in 1914.

A detailed statement of the assets and liabilities of the applicant appears in this Commission's Decision No. 2175 upon Application No. 1391. As the affairs of this corporation are closely linked with those of The Nevada California Power Company, a statement of the assets and liabilities of that corporation is here given. This statement shows the company's assets and liabilities as of November 30, 1914.

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The Nevada California Power Company.

Assets.

		As per books
Property investments		$8,266,856 74
Stocks and bonds of other companies		326,570 62
Working assets:		
Cash	$76,823 30	
Accounts receivable	100,265 54	
Materials and supplies	51,862 56	
Deferred charges	2,374 03	
		231,325 43
Due from Southern Sierras Power Company		1,514,246 69
Due from Sierras Construction Company		85,409 63
Due from other system companies		258,538 68
Capital stock discount		
		$10,682,947 79

Liabilities.

		As per books
Capital stock		$5,000,000 00
Funded debt	$3,000,000 00	
Less redeemed by sinking fund	367,000 00	
		2,633,000 00
Current liabilities:		
Notes payable	$43,428 00	
Interest accrued	38,346 18	
Sundry accounts	39,706 35	
Consumers' deposits	31,421 10	
		152,901 63
Dividend scrip certificates		573,570 00
Surplus:		
Unappropriated at January 1, 1914, after dividends, $826,605.00	$1,187,527 49	
Net earnings, 11 months of 1914 less dividends, $200,000.00	43,518 88	
Sales of donated stock	263,735 89	
Sinking fund reserve	373,289 38	
Reserved for depreciation	407,013 54	
Other reserves	40,693 43	
Bond redemption discounts	7,797 55	
		2,323,476 16
		$10,682,947 79

The earnings of The Nevada California Power Company for the years 1912 and 1913 have been reported by the applicant as follows:

	1912	1913
Operating revenue	$874,173 13	$995,834 83
Operating expense	222,521 44	334,760 43
Net operating revenues	651,651 69	661,074 40
Adjustments	31,981 13	76,326 62
Gross net income	683,632 82	737,401 02
Interest, depreciation and discounts	274,848 54	362,118 33
Net income	408,784 28	375,282 69

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It is apparent in this proceeding that a large part of applicant's indebtedness to system corporations and to banks has been incurred in the construction of its facilities.

In this proceeding the city of Los Angeles intervened. Through its representatives it took the position that this Commission should not grant the application, and filed a brief in opposition. The attorneys for the city of Los Angeles stated that the public interests of the city of Los Angeles required that the application should be denied. It was specifically stated, however, by representatives of the city of Los Angeles that the water rights concerned in the present application were not contested by the city. The position of the city was rather against the general plans of this company for future development and was not directly concerned with the plans here under consideration.

The applicant has completed a certain amount of construction work. It has borrowed the money to pay for this work and now desires merely to change its form of indebtedness from notes and accounts payable to long term bonds. There is, of course, nothing in this situation which would change the relationship between the applicant and the city of Los Angeles.

I believe that the matter as now presented by this applicant is in such form that the request here under consideration is for a reasonable amount of bonds in view of the magnitude of the project. I believe this Commission may authorize a bond issue of a total amount of $3,668,000.00 upon the properties owned by The Southern Sierras Power Company in view of the showing of the actual cost of these properties, of their earning capacity and of the relationship between the applicant and The Nevada California Power Company.

In order to assure a continuance of the support heretofore given by The Nevada California Power Company, I shall recommend as a condition that The Nevada California Power Company guarantee the new issue of bonds as it has guaranteed the payment, both as to principal and interest, of the bonds heretofore issued by The Southern Sierras Power Company.

While the applicant's original request in this matter was for an issue of bonds to pay off in part the sums due system corporations, I shall make the order general in this respect, and the applicant may submit the necessary details to enable this Commission to issue a supplemental order, specifying in exact terms the purposes to which certain of the proceeds from the bonds should be applied.

Accordingly I submit the following form of order:

ORDER.

The Southern Sierras Power Company having applied to this Commission for authority to execute a mortgage and deed of trust, and for authority to issue $3,668,000.00 of its first and refunding bonds under

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said mortgage and deed of trust as set forth in the preceding opinion, and a hearing having been held and it appearing that the purposes for which the applicant desires to issue bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that The Southern Sierras Power Company be granted authority, and it is hereby granted authority, to execute a mortgage and deed of trust to Los Angeles Trust and Savings Bank and The International Trust Company of Denver, trustees, said mortgage and deed of trust to be dated January 1, 1915, and to secure the issue of first and refunding 6 per cent gold bonds as therein provided, said mortgage to be substantially in the form of a copy of said mortgage and deed of trust filed in connection with this proceeding and marked Exhibit "B," to which reference is hereby made.

It is hereby further ordered that The Southern Sierras Power Company be granted authority, and it is hereby granted authority, to issue $3,668,000.00 of its first and refunding Series "A," 6 per cent fifty-year bonds under said mortgage and deed of trust, said bonds to be issued upon the following conditions and not otherwise:

1. Two million five hundred thousand dollars of said bonds shall be used to pay, retire or discharge $2,500,000.00 of first mortgage 25-year bonds of The Southern Sierras Power Company now outstanding upon such basis that for every $1,000.00 first and refunding bond herein authorized to be issued there shall be paid or retired a $1,000.00 first mortgage 25-year bond of applicant now outstanding.

2. Three hundred thousand dollars of the bonds herein authorized to be issued shall be issued to pay, retire or discharge $300,000.00 face value of applicant's 6 per cent 25-year bonds heretofore authorized to be issued by this Commission.

3. Seventy thousand dollars of the bonds herein authorized to be issued shall be used to pay, retire or discharge $70,000.00 of bonds of the Lytle Creek Power Company, a subsidiary of applicant.

4. Seven hundred ninety-eight thousand dollars of the bonds herein authorized to be issued shall be sold so as to net the applicant not less than 90 per cent of the face value thereof plus accrued interest.

5. The proceeds derived from the sale of said $798,000.00 of bonds shall be used for paying applicant's indebtedness to The Nevada California Power Company, excluding any part of such indebtedness as may heretofore have been paid through the issue of $300,000.00 of applicant's first mortgage 25-year bonds authorized to be issued by this Commission in Decisions No. 2175 and No. 2244, and for paying applicant's indebtedness to banks or other corporations, but the moneys derived from the sale of said bonds shall be applied to the purposes set out in this section only after the applicant shall have filed a supplemental list with this Commission of the indebtedness which it proposes

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to defray from the proceeds of the $798,000.00 of bonds, and this Commission shall have issued a supplemental order approving such disposition of the proceeds thereof.

6. The authority herein granted is conditioned upon the guarantee by The Nevada California Power Company of the payment, both as to principal and interest, of the bonds herein authorized to be issued.

7. The Southern Sierras Power Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds from the sale of the bonds herein authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or sales of bonds during the preceding month, the terms and conditions of such sale, the moneys derived therefrom and the use and application of such moneys, all as provided in this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

8. The authorization herein given to issue bonds shall apply to such bonds as shall have been issued on or before June 30, 1916.

9. This order shall not become effective until the fee prescribed in section 57 of the Public Utilities Act, as amended, has been paid.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

DECISION No. 2593.

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF SACRAMENTO FOR PERMISSION TO CONSTRUCT A PUBLIC ROAD CROSSING OVER THE TRACK OF THE SOUTHERN PACIFIC COMPANY NEAR THE TOWN OF GALT, CALIFORNIA.

Application No. 1722.

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF SACRAMENTO FOR PERMISSION TO CONSTRUCT A PUBLIC ROAD CROSSING OVER THE TRACK OF THE SOUTHERN PACIFIC COMPANY NEAR THE TOWN OF GALT, CALIFORNIA.

Application No. 1723.

Decided July 13, 1915.

The two applications of the county of Sacramento contemplate the construction of three crossings at grade across the tracks of Southern Pacific Company, to

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which the railway company objects, and an investigation showing that the public necessity requires the crossings applied for, application granted.

Hugh B. Bradford, for Applicant.

Geo. D. Squires, for Southern Pacific Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

These two applications were made by the county of Sacramento for permission to construct public highways over the tracks of the Southern Pacific Railroad in the vicinity of Galt. They were filed at the same time, were consolidated at the hearing, and will both be covered in this opinion and the order which follows.

There are three crossings covered by these two applications and a brief description of them and of the track and roadway conditions in the vicinity is necessary. The Southern Pacific's main line between Sacramento and Stockton runs in a northwesterly direction through Galt and for several miles north. At Galt the Ione branch leaves the main line and runs in a northeasterly direction. The Sacramento-Stockton road roughly parallels the main line for several miles north of the town of Galt and is about half a mile to the east of it. The main road to the west of the town, running in the same general direction, is the north and south Bruceville road. Between these two roads in the territory north of Galt within a distance of three miles two roads now cross the track. The most northerly of these, known as the "Twin Cities" road, is between sections 9 and 16; the other was referred to at the hearing as the "Valley Oaks" road, and is just south of the center of sections 21 and 22. There is also a road from Galt into this territory which parallels and is adjacent to the track to a point three miles north of the town.

The three crossings now proposed are on east and west roads. At the hearing they were called, for convenience, crossings A, B and C, and they will be so referred to here. Crossing A is to be over the main line track on a proposed road, through the centers of sections 15 and 16, which is one-half mile south of the "Twin Cities" road and a little more than one mile north of the road through sections 21 and 22, called the "Valley Oaks" road. Crossings B and C are on the Ione road, a little less than one-half mile south of the road through sections 21 and 22. Crossing B is to be over the main line and C over the Ione branch. The Ione highway is now constructed up to these proposed crossings; the only gap in it for several miles being at these crossings, and the space about 1,000 feet long between them.

The Southern Pacific opposed the granting of these applications on the ground that these crossings were not demanded by public con-

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venience and necessity. It is the contention of the Southern Pacific Company that the necessity of crossing "A" can be obviated by the construction of a road, about one-half mile long, on the west side of the track from the end of the present road which parallels the track to the road which it is proposed to build across the track at crossing "A." There are several people on the east side of the track, in this immediate neighborhood who have business on the west side, opposite the crossing, and several people on the west side, whose nearest way to Galt would be across the track at crossing "A" to the Sacramento-Stockton road and thence to town. If this proposed road, suggested by the Southern Pacific, were built and were properly improved, people on the west side of the track would undoubtedly use it to Galt, but from the testimony I am satisfied that it will be some time before this road is constructed, and even if it were built, people on the east side would still need a crossing at this point to reach their interests on the opposite side of the track and to reach this new road which would then be their shortest route to town. The acreage property on the west side of the track has been subdivided and sold and will, beyond doubt, be largely built up in the future and I think it only reasonable that people who have purchased in this tract should have access to the highly improved Stockton-Sacramento road in some manner other than by a detour of over a mile. The residents of the territory east of the track should also be able to attend to their business on the west side without a similar detour.

No substitute was offered by the Southern Pacific for proposed crossings "B" and "C." This territory, like that surrounding crossing "A," has been subdivided into 20-acre tracts many of which have been sold and it has been more largely settled than is the case in the territory further north. Many of the settlers make trips daily, or oftener, from one side of the tracks to the other and are obliged to follow a circuitous route which adds over a mile to the length of each trip. The delivery men from the town of Galt, some of whom make as high as a dozen deliveries a day, are obliged to make this same detour when they have deliveries to make on both sides of the tracks and this same detour must also be made by traffic from Ione to the river on the west of the tracks. The farmers living near the river who have children attending the high school to be taken daily back and forth, are put to the same inconvenience. Were these two crossings opened this traffic, and probably much more, would be diverted from the crossings in town now used where the main line and one or more sidings are crossed. At these crossings many delays are occasioned by trains blocking the street and it is often necessary for traffic to pass between sections of a train "cut" for the crossings in such a manner that no view can be obtained of the main line tracks.

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The proposed crossings on the main line are open and the crossing on the Ione branch is practically so and although a certain hazard always attends a grade crossing, the lack of obstructions to the view at these crossings will reduce it to a minimum.

I find as a fact that public convenience and necessity demand the openings across the track applied for and I recommend the following form of order:

ORDER.

County of Sacramento, California, having on June 11, 1915, applied to the Commission for permission to construct three crossings at grade over the tracks of Southern Pacific Company, near the town of Galt, Sacramento County, California, and a public hearing having been held, and it appearing to the Commission, for the reasons set forth in the foregoing opinion, that public convenience and necessity demand the opening of these crossings, and that these applications should be granted,

It is hereby ordered that permission be and the same is hereby granted County of Sacramento to construct three (3) crossings at grade across the tracks of Southern Pacific Copmany, as shown by the map attached to the application and more particularly described, as follows:

Crossing A—An east and west crossing over the main line track of the Southern Pacific on the east and west center lines of section 15, township 5 north, range 6 east.

Crossing B—An east and west crossing over the main line track of the Southern Pacific Company on the east and west section line between sections 21 and 22, township 5 north, range 6 east.

Crossing C—An east and west crossing over the Ione branch of the Southern Pacific Company on the east and west section line between sections 21 and 22, township 5 north, range 6 east.

All of these crossings being in the vicinity of Galt, Sacramento County, California, and to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing these crossings at grade shall be borne by applicant.

(2) The expense of maintaining the crossings up to two (2) feet of the rails of Southern Pacific Company shall be borne by applicant.

(3) The expense of maintaining these crossings across the tracks and to a distance of two (2) feet outside thereof shall be borne by Southern Pacific Company.

(4) These crossings shall be constructed of a width not less than twenty-four (24) feet, with grades of approach not exceeding four (4) per cent; shall be protected by a suitable crossing sign, and shall in every

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way be made safe and convenient for the passage thereover of vehicles and other road traffic.

(5) The Commission reserves the right to make such further orders relative to the location, construction, maintenance and protection of said crossings as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

DECISION NO. 2594.

IN THE MATTER OF THE APPLICATION OF THE DAVIS WATER COMPANY FOR PERMISSION TO CHANGE ITS PRESENT METHOD OF COMPUTING FLAT WATER RATES AND ESTABLISHING METER RATES.

Application No. 1569.

Decided July 13, 1915.

Applicant, operating a water distributing system in the town of Davis at a flat rate of $1.50 per month to the majority of its consumers, the balance receiving service at flat rates varying from 75 cents to $5.00, and it being applicant's intention to meter its system, it applies for the establishment of a schedule of meter rates and also a uniform schedule of flat rates.

Held, After an investigation of conditions the following schedule is established to become effective August 1, 1915: Meter service, minimum charge $1.00 per month, entitling consumer to 400 cubic feet; next 600 cubic feet 20 cents per 100; next 2,000, 15 cents per 100; above 3,000 10 cents per 100 cubic feet. per month. Water for street sprinkling 10 cents per 100 cubic feet. Flat rates for 1½-inch fire hydrants $1.00 per month, 3-inch fire hydrants $2.00 per month, further flat rates to remain unchanged.

T. G. Schmeiser and *Wm. Burbrow*, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner*.

The applicant is engaged in the business of supplying water for domestic and irrigation purposes in the unincorporated town of Davis, supplying the county of Yolo with water for street sprinkling in said county, and maintaining a supply of water in a number of fire hydrants for fire protection throughout the town. The company had at the time of filing application a total of 153 consumers, 130 of whom were paying

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a flat rate of $1.50 per month, the remaining 23 paying flat rates varying from 75 cents to $5.00 per month. The county of Yolo pays a flat rate of $50.00 per month during the summer months for water for street sprinkling. No income has been derived from the fire protection service.

The application states that it is the intent of applicant to serve all consumers through meters, but that meters must be placed gradually as the finances of the company permit. Applicant therefore desires to establish a certain schedule of meter rates, and for those consumers not immediately placed under meter, desires a certain schedule of flat rates, all of which are set forth in applicant's Exhibit "C." Applicant asks that the amount to be charged for water maintained for fire protection be fixed at $25.00 per month, and that certain hours be set for irrigation and for lawn and street sprinkling. The applicant's proposed monthly meter rates are:

For 3,000 gallons or less, minimum charge of $1.00 per month.
For the next 10,000 gallons, 25 cents per thousand gallons.
For the next 7,000 gallons, 15 cents per thousand gallons.
For the next 80,000 gallons, 10 cents per thousand gallons.
For street sprinkling, 10 cents per thousand gallons.

The desired schedule of flat rates provides for a monthly payment of $1.00 for domestic use within a residence, with additional charges of 50 cents for toilet, 25 cents for bath, 1 cent per square yard sprinkled or irrigated. Maximum proposed flat rate is $7.50 for hotels of more than 50 rooms, or $5.00 for hotels of less than 50 rooms, for livery stables of more than 5 horses and for public automobile garages. All other classifications of consumers fall between these limits except public baths, for which the proposed charge is 75 cents per month.

The Davis Water Company was incorporated in April, 1913. By Decision No. 880 of the Railroad Commission of California dated August 15, 1913, the Schmeiser Manufacturing Company was authorized to sell to the Davis Water Company that portion of its property which had hitherto been devoted to the public utility water business, with the exception of one tank of 10,000 gallons capacity, which was to be leased to the Davis Water Company at a yearly rental of $50.00. The purchase price was $6,300.00, to be paid in stock of the Davis Water Company at par. Decision No. 876, dated August 15, 1913, on Application No. 593, gave the Davis Water Company permission to issue stock at par as follows:

$6,300 00 to buy plant from Schmeiser Manufacturing Company.
650 00 for organization purposes.
8,000 00 to build steel tanks.
21,700 00 to extend distribution system and install meters.

This decision was amended October 30, 1913, by Decision No. 1062, to the effect that the Davis Water Company was authorized to sell capital

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stock of par value not to exceed $37,125.00, to net the company not less than 80 per cent of par value, and to erect double tank water tower at a cost not to exceed the sum of $8,000.00, or to issue $25,000.00 worth of refunding coupon certificates at par in amounts of $100.00, $50.00 and $25.00, bearing interest at the rate of 6 per cent per annum from June 1, 1913, payable on or before June 1, 1923. In Exhibit "B" filed with Application No. 1569 it is set forth that a total of $700.00 in these refunding coupon certificates has been issued. In as much as the estimated cost new of the physical properties of the Davis Water Company as of May 17, 1915, prepared by the Commission's hydraulic department is stated as $10,623.00, to which should be added a value of $250.00 for franchise as testified to by T. G. Schmeiser, making an estimated capital charge to May 17, 1915, of $10,873.00, and further, in as much as the company has not erected a tank as proposed but is still using leased storage it appears that ample funds still stand authorized for very extensive improvements.

This Commission is convinced of the justice and advisability of fully metering domestic water systems. There appears no reason against the installation of meters in the town of Davis, and because of the small number to be installed, together with the financial possibilities of the company, it is advisable that the town be fully metered by the company at the earliest possible date. The statement of the company that it will meter consumers "from time to time as its finances permit" is open to the criticism that it would become possible to do an injustice to certain consumers under flat rates by postponing indefinitely the installation of their meters.

It is in evidence that reasonable annual returns to be received by the utility should amount to $3,030.00. If the town is completely metered, 132 new meters should be installed, involving an outlay of approximately $1,320.00—

Interest on additional meters at 7 per cent per annum, $92.00.
Maintenance of additional meters at 25 cents each, $33.00.
Annual depreciation on additional meters, $66.00.
Amount to be added to necessary annual revenue due to installation of meters, $191.00.
Annual revenue necessary with fully metered system, $3,221.

In the matter of rates, it is found that at the schedule of meter rates proposed by the applicant, based on the consumption of water through meters in California towns of size and conditions similar to Davis, the annual return would be approximately $4,250.00, exclusive of the income from street sprinkling or fire protection. This Commission is in favor of the adoption of the cubic foot or multiples thereof as a volumetric unit for the distribution of water for domestic use. Based on the experience of other towns as above, the following schedule of rates,

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yields an ample return to the utility and at the same time gives a segregation of quantities used which is fairer to the consumer:

400 cubic feet or less, minimum charge of $1.00 per month.
For the next 600 cubic feet, 20 cents per 100 cubic feet per month.
For the next 2,000 cubic feet, 15 cents per 100 cubic feet per month.
Above 3,000 cubic feet, 10 cents per 100 cubic feet per month.

The approximate yield to applicant from this rate, exclusive of income from street sprinkling or fire protection, would be $4,191.00 per annum. Deducting from this the probable necessary annual revenue for operation of the fully metered system leaves an apparent surplus exclusive of the indefinite income from street sprinkling and fire protection of $970.00 to cover variations between assumptions and actual conditions yet to be developed.

In view of the fact that there is no statement in evidence as to the quantity of water used by the county in sprinkling streets, I consider the rate of 10 cents per 100 cubic feet to be fair.

In the matter of maintaining a supply of water for fire protection, the company is justly entitled to a certain revenue. For this I consider the sum of one (1) dollar per month should be paid for each one and one-half (1½) inch fire hydrant and two (2) dollars per month for each three (3) inch fire hydrant.

With the installation of meters, the draft upon the water system will probably be so much lessened that the restriction of irrigating and street sprinkling to certain hours will not be necessary.

For these reasons I recommend the disposition of this application as shown in the following form of order:

ORDER.

The above entitled proceedings having been given public hearing and having been submitted and being now ready for decision,

It is hereby ordered that the monthly rates to be charged by applicant be as follows:

Measured Water.

For 400 cubic feet or less, minimum charge of $1.00 per month.
For the next 600 cubic feet, 20 cents per 100 cubic feet per month.
For the next 2,000 cubic feet, 15 cents per 100 cubic feet per month.
Above 3,000 cubic feet, 10 cents per 100 cubic feet per month.
For water used for street sprinkling the rate shall be 10 cents for each 100 cubic feet so used.

Flat Rates.

For each one and one-half (1½) inch street fire hydrant the monthly rate shall be $1.00 and for each three (3) inch street fire hydrant it shall be $2.00.
Further flat rates to remain unchanged.

It is further ordered that restriction of irrigating and street sprinkling to certain hours is not at present necessary.

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It is hereby further ordered that the rates herein established become effective on and after August 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

Decision No. 2595, grade crossing; not printed. See end of volume.

DECISION NO. 2596.

IN THE MATTER OF THE REORGANIZATION OF THE UNITED LIGHT AND POWER COMPANY AND SUBSIDIARY COMPANIES.

Application No. 1542.

Decided July 13, 1915.

Applicant having been directed to file a copy of its proposed deed of trust amended in accordance with previous directions of the Commission in prior orders in the above entitled action and such amended trust deed having now been filed it is approved and applicant authorized to execute a mortgage and deed of trust in accordance therewith, provided that such deed shall not hereafter be amended unless such amendments have been formally approved by the Commission. Previous orders also corrected to refer to a more complete description of the properties transferred, as filed with applicant's amended application.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL OPINION.

On July 8, 1915, this Commission issued an order (Decision No. 2579) in the above entitled matter, amending Decision No. 2359, dated May 10, 1915, and Decision No. 2403, dated May 20, 1915. The order of July 8, 1915, authorized Consolidated Electric Company to issue and deliver $2,024,500.00 face value of bonds to Mr. E. W. Wilson as payment for the properties of United Light and Power Company (of New Jersey), United Light and Power Company (of California), Central Oakland Light and Power Company, Consumers Light and Power Company, Equitable Light and Power Company, and South Side Light and Power Company. In its order, this Commission identified the property to be acquired by Consolidated Electric Company from Mr. E. W. Wilson by referring to Exhibit No. 12, attached to the original application, and to a report of Francis E. Wilkinson filed in connection with this proceeding.

Inasmuch as Exhibit No. 12 and the report of Mr. Francis E. Wilkinson refer only to the physical properties, applicants request that the

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order of July 8, 1915, be amended so as to be in accordance with the provisions of an agreement (marked Exhibit "A," attached to second amended application) made between Mr. E. W. Wilson and Great Western Power Company, dated June 3, 1915. The terms of the agreement cover the intangible as well as the physical properties of the United Light and Power Company and its subsidiaries.

This Commission's order dated July 8, 1915 (Decision No. 2579) also authorized Consolidated Electric Company to execute a mortgage and deed of trust to secure the payment of $2,500,000.00 face value of forty-year 5 per cent bonds, provided that the said mortgage and deed of trust be amended in certain particulars.

Consolidated Electric Company, on July 12, 1915, filed two amendments. One of the amendments obligates the company to pay annually to the trustee for the purpose of a sinking fund an amount equal to 1 per cent of the bonds outstanding. The first payment is to be made on June 1, 1920. The sinking fund payments together with any accretions, shall be used to purchase and redeem bonds secured by the mortgage and deed of trust of Consolidated Electric Company at a price not exceeding the par value of the principal of each bond plus accrued interest.

The other amendment relates to the power of the bondholders to amend the mortgage and deed of trust.

It provides that at a meeting of the bondholders called for the purpose of modifying the mortgage and deed of trust a quorum shall consist of the holders of 50 per cent of the bonds outstanding and that every question submitted to such meeting of the bondholders shall be decided by the vote of bondholders representing three-quarters of the principal amount of the bonds represented at such meeting.

Section two of article ten referring to the notice to be given reads:

> "Sixty days' notice at least to the bondholders specifying the place, day and hour of meeting shall be given previously to any such meeting. Such notice shall be given by publishing the same at least once a week for four weeks in a newspaper of general circulation published in the city and county of San Francisco, State of California.
>
> "Such notice shall state particulars with respect to the nature of the business to be transacted at the meeting thereby to be convened, as the trustee or the company convening the meeting may deem sufficient. In the event such meeting be convened by the company, at least sixty days' notice of the meeting shall be given by the company to the trustee, any bondholder may at any time leave with the trustee his name and address, and thereafter a copy of any notice provided hereby to be given to the bondholders shall be mailed by the trustee to such bondholder at such address at least thirty days before such meeting, whether or not such bondholder may then continue to be the owner of any bonds."

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The approval of the proposed mortgage and deed of trust is given upon the expressed condition that no amendment thereto shall become effective until the same has been submitted to and received the approval of this Commission.

Accordingly we submit the following form of order:

THIRD SUPPLEMENTAL ORDER.

Whereas, this Commission on May 10, 1915, having issued its order (Decision No. 2359) in the above entitled matter; and whereas this Commission on May 20, 1915, having issued its first supplemental order (Decision No. 2403) in the above entitled matter; and whereas this Commission on July 8, 1915, having issued its second supplemental order (Decision No. 2579) in the above entitled matter; and whereas applicants now having requested certain modifications and having complied with certain conditions,

It is hereby ordered that the first subdivision of paragraph three of the second supplemental order reading:

> "Two million twenty-four thousand five hundred dollars of said bonds to be issued to E. W. Wilson in payment for the properties to be conveyed by E. W. Wilson to Consolidated Electric Company, consisting of the properties of United Light and Power Company (of New Jersey), United Light and Power Company (of California), Consumers Light and Power Company, Equitable Light and Power Company, South Side Light and Power Company, Central Oakland Light and Power Company, in accordance with a list of the assets of said companies on file with this Commission in this proceeding in Exhibit No. 12, and more particularly as listed in this proceeding with this Commission in the report of Francis E. Wilkinson, on file with this Commission;"

be amended so as to read:

> "Two million twenty-four thousand five hundred dollars of said bonds to be issued to E. W. Wilson in payment for the properties to be conveyed by E. W. Wilson to Consolidated Electric Company, consisting of the properties of United Light and Power Company (of New Jersey), United Light and Power Company (of California), Consumers Light and Power Company, Equitable Light and Power Company, South Side Light and Power Company, Central Oakland Light and Power Company, in accordance with an agreement marked Exhibit "A" attached to '2d Amended Application' between Mr. E. W. Wilson and Great Western Power Company, dated June 3, 1915."

It is hereby further ordered that Consolidated Electric Company be granted authority and it is hereby granted authority to execute a mortgage and deed of trust substantially of the same tenor and substance as the mortgage and deed of trust marked Exhibit "C." attached to the second amended application.

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It is hereby further ordered that no amendments or modifications to said mortgage and deed of trust shall become effective until approved by this Commission or other governmental body of competent jurisdiction.

It is hereby further ordered that the orders of this Commission heretofore issued in the above entitled matter shall remain in full force and effect except as to such parts of said orders as may be in conflict with this third supplemental order.

The foregoing third supplemental opinion and order are hereby approved and ordered filed as the third supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of July, 1915.

DECISION No. 2597.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND ARIZONA RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF BONDS.

Application No. 808.

Decided July 13, 1915.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER No. 9.

Supplemental application having been made by the San Diego and Arizona Railway Company, a corporation, on July 6, 1915, for the approval by the Commission of certain contracts for purchase of material, which is necessary for the construction of an additional portion of said company's line ending at Campo, San Diego County, California, and amounting to a total cost of thirty-four thousand, nine hundred and sixteen dollars ($34,916.00) as per detailed statement attached to the application; and it appearing to the Commission that this application should be granted,

It is hereby ordered that said purchases, as shown in the application, are hereby approved.

Dated at San Francisco, California, this 13th day of July, 1915.

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DECISION NO. 2598.

IN THE MATTER OF THE APPLICATION OF SUTTER BUTTE CANAL COMPANY AND RICHVALE LAND COMPANY FOR ORDER AUTHORIZING SAID RICHVALE LAND COMPANY TO MAKE CERTAIN GRANTS AND CONVEYANCES TO SAID SUTTER BUTTE CANAL COMPANY.

Application No. 1770.

Decided July 15, 1915.

Richvale Land Company, owning a system of laterals supplied from the ditches of the Sutter Butte Canal Company, applies for permission to transfer such laterals to the latter named company, and it appearing that better service will be given by the one company operating this system, application granted.

REPORT OF THE COMMISSION.

Sutter Butte Canal Company is a public utility water company, engaged in the business of diverting water from the Feather River and distributing the same for the irrigation of certain lands in the counties of Butte and Sutter. Richvale Land Company owns and operates a system of laterals, through which water is conveyed from the main canal of Sutter Butte Canal Company to irrigators in a certain portion of Butte County. The present application seeks authority from the Commission to the transfer, by Richvale Land Company to Sutter Butte Canal Company, of this system of laterals. The transfer is to be made by two deeds, copies of which are attached to the application in this proceeding, and marked "Exhibit A" and "Exhibit B," respectively. The property to be conveyed by deed, marked "Exhibit A," is described as follows:

> "All of the right, title and interest of the said party of the first part in and to the existing system of main lateral and distributing ditches for the irrigation of those certain lands in the Richvale colonies situated west of the Cherokee canal in the county of Butte, State of California; also all easements, rights of way and strips of land for ditches or canals in said territory owned by said party of the first part or reserved by it for irrigation purposes, including the land described in that certain deed of conveyance from Mary A. Baynon to said party of the first part, dated March 29, 1913, and recorded in the office of the county recorder of the said county of Butte, on March 31, 1913, in book 135 of deeds, page 84, Butte County Records, excepting a strip of land thirty (30) feet wide, running north and south along the west line of said land described in said deed from said Mary A. Baynon, which thirty (30) foot strip is reserved for a roadway; also including in this conveyance a strip of land thirty-three (33) feet wide, measured east and west, running northerly and southerly, along the easterly side of that

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certain piece of land described in that certain deed of conveyance from Henry H. Cutter to said party of the first part, dated December 10, 1913, and recorded in the office of the county recorder of the said county of Butte, on December 19, 1913, in book 138 of deeds, page 283, Butte County Records, the remainder of said land described in said deed from said Cutter, to wit: The westerly eighty-six (86) feet thereof, measured east and west, being excepted from this conveyance to said party of the second part.

"There is also excepted from this conveyance that certain land described in that certain deed of conveyance from A. K. Baker, to said party of the first part, dated June 1, 1914, and recorded in the office of the said county recorder of Butte County on June 22, 1914, in book 141 of deeds, page 68, Butte County Records."

The property to be conveyed by deed marked "Exhibit B" is described as follows:

"All that certain piece or parcel of land situate, lying and being in said county of Butte, State of California, described as follows:

"Commencing at the southeast corner of lot No. (873) of Richvale Colony No. (2), as per map of said colony on file and of record in the office of the county recorder of said Butte County, Butte County Records, and to which map reference is hereby made—said corner being a point on the section line 1,335.7 feet east of the quarter corner between sections 15 and 22, township 19 north, range 2 east, M. D. B. and M.; thence south 88° 47′ west 180.4 feet; thence north 0° 36′ east 190.0 feet; thence north 88° 47′ east 113.8 feet; thence north 16° 34′ east 1,060.4 feet; thence north 89° 13′ east 122.3 feet; thence south 16° 34′ west 1,258.6 feet to the point of beginning, and containing 3.76 acres more or less, and being a part of that certain tract of land known as lot 873 of said Richvale Colony No. 2; together with the pumping plant of said Richvale Land Company situate on said parcel of land hereby conveyed, and all the appliances and equipment pertaining to said pumping plant, and all of the rights of said Richvale Land Company appurtenant to said pumping plant or pertaining thereto."

The Commission believes that public convenience and necessity will be subserved by having this system of laterals owned and operated by the company which also owns and operates the main canal, and this application will accordingly be granted.

ORDER.

It is hereby ordered that this application be, and the same is hereby, granted.

Dated at San Francisco, California, this 15th day of July, 1915.

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DECISION NO. 2599.

A. J. LOFGREN AND BERT EVANS

vs.

SUTTER BUTTE CANAL COMPANY AND RICHVALE LAND COMPANY.

Case No. 789.

Decided July 15, 1915.

Complainants petition the Commission to compel defendant company to take over and operate certain laterals belonging to the Richvale Land Company and subsequent to the hearing application having been made by the Richvale company to transfer its laterals to the Sutter Butte company, which application was granted, complaint dismissed.

A. F. Jones and *Geo. F. Jones*, for Complainants.

H. Ingram, Isaac Frohman and *W. H. Carlin*, for Sutter Butte Canal Company.

J. Oscar Goldstein, for Richvale Land Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

In this proceeding complainants asked the Commission to order Sutter Butte Canal Company to take charge of, maintain and operate a certain system of laterals in Butte County. At the hearing Sutter Butte Canal Company claimed that it did not own this system of laterals, and that it was under no obligation to maintain and operate these laterals. That company claimed that the Richvale Land Company owned these laterals and was the proper party to assume the obligation of maintaining and operating them. Since the hearing, Application No. 1770 has been filed with the Commission, this being an application by Richvale Land Company to transfer to Sutter Butte Canal Company the lateral system in question. The Commission has this day granted that application.

In inquiring into this system of laterals the Sutter Butte Canal Company, of course, assumed the obligation to maintain and operate the laterals. This arrangement, therefore, entirely disposes of the controversy involved in the present proceeding, and the complainants have accordingly asked that the present proceeding be dismissed.

ORDER.

It is hereby ordered that the complaint in this proceeding be, and the same is hereby, dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of July, 1915.

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DECISION NO. 2600.

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME TELEPHONE COMPANY FOR LEAVE TO DISCONTINUE ITS PRACTICE OF ALLOWING DISCOUNTS TO ITS SUBSCRIBERS WITHIN THE REDLANDS DISTRICT.

Application No. 1614.

Decided July 15, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The applicant in the above entitled matter having made written request on July 12, 1915, that the proceeding be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 15th day of July, 1915.

DECISION NO. 2601.

CITY OF REDLANDS

vs.

SOUTHWESTERN HOME TELEPHONE COMPANY.

Case No. 621.

Decided July 15, 1915.

City of Redlands files a complaint bringing into question the rates of the Southwestern Home Telephone Company, and having no evidence in support of their complaint to submit at the hearing, they agree to withdraw same provided defendant is not earning over 8 per cent upon its investment, and a check of the data submitted by defendant company showing that it is not earning 7 per cent on its investment, complaint dismissed.

F. A. Leonard, for City of Redlands.

Edgar G. Pratt, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is a complaint brought by the City of Redlands, calling into question the reasonableness of the rates and certain rules and regula-

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tions of Southwestern Home Telephone Company for telephone service in the city of Redlands and territory served from said city, and asking that the Railroad Commission fix and establish rates for such service and establish such rules as may be proper.

After numerous delays the case came to a hearing in the city of Redlands on July 12, 1915. At the hearing counsel for the city stated that the city was not prepared to present evidence in support of the allegation that the defendant's rates are unreasonable, or to show what rates it considers would be reasonable, but that it looks to the Railroad Commission to make such investigation and present such evidence as may be necessary to show whether or not the present rates are unreasonable, and if found to be so to establish proper rates. Counsel agreed, however, that if it were shown that the defendant is not now earning in excess of 8 per cent net on its reasonable investment in its Redlands plant, it will ask that this complaint be withdrawn.

This defendant has gone to great expense and trouble in preparing and presenting to the Commission a complete inventory and appraisal of its plant, as well as statements of its revenues and expenses and such other data as was required by the Commission in its investigation. The Commission has carefully and thoroughly examined all of this data and appraised the defendant's property in Redlands. The Commission's telephone engineer has testified that this defendant is not now earning 8 per cent or even 7 per cent net, whereupon the complainant asks that this complaint be withdrawn.

The following form of order is accordingly recommended:

ORDER.

Complaint having been made by City of Redlands, a municipal corporation of the sixth class, complainant, versus Southwestern Home Telephone Company, a corporation, defendant, calling into question the reasonableness of defendant's rates, rules and regulations for telephone service in the city of Redlands, and asking that the Railroad Commission fix and establish proper rates, rules and regulations for said service, and a hearing having been had, and the said complainant, through its counsel, having asked that this complaint be withdrawn,

It is hereby ordered that the complaint herein be and it is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of July, 1915.

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DECISION No. 2602.

IN THE MATTER OF THE APPLICATION OF SANTA CLARA WATER AND IRRIGATING COMPANY FOR AN ORDER PERMITTING IT TO BORROW MONEY.

Application No. 1734.

Decided July 16, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Santa Clara Water and Irrigating Company having on July 16, 1915, made request to this Commission that the above entitled application be dismissed,

It is hereby ordered that said application be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION No. 2603.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY TO ISSUE NOTES.

Application No. 1570.

Decided July 16, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

This Commission having heretofore in this proceeding authorized Oakland, Antioch and Eastern Railway to issue a note of the face value of $100,400.00 to Union Trust Company of San Francisco upon certain conditions, and it appearing that in lieu of issuing said note applicant desires to issue two notes, one to Union Trust Company of San Francisco of the face value of $90,400.00, and the other to A. W. Maltby of the face value of $10,000.00,

It is hereby ordered that, in lieu of the note of the face value of $100,400.00 which this Commission, in this proceeding, has heretofore authorized applicant to issue to Union Trust Company of San Francisco, Oakland, Antioch and Eastern Railway be, and it is hereby, authorized to issue two notes, one of the face value of $90,400.00 to

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Union Trust Company of San Francisco, and one of the face value of $10,000.00 to A. W. Maltby, upon the following condition:

Said two notes shall be issued under the terms and in accordance with all the conditions heretofore imposed by this Commission, with reference to the issue of said note of $100,400.00 to Union Trust Company of San Francisco.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION No. 2604.

IN THE MATTER OF THE APPLICATION OF THE ORO ELECTRIC CORPORATION FOR PERMISSION TO RENEW CERTAIN PROMISSORY NOTES.

Application No. 1773.

Decided July 16, 1915.

Applicant applies for permission to issue seven promissory notes aggregating a total face value of $26,000.00, and also for permission to renew a note to the Diamond Match Company in the sum of $1,000.00, which note was renewed for a period of over one year without first obtaining the necessary permission, and it appearing that such notes were for proper capital purposes, application granted.

Goodfellow, Eells, Moore & Orrick, by *W. H. Orrick,* for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this application, Oro Electric Corporation asks for authority to renew, for periods not exceeding one year from July 15, 1915, the following notes:

Payee	Date of original issue	Date of renewal	Date due	Amount
Standard Oil Company of California	July 15, '14		July 15, '15	$2,000 00
Standard Oil Company of California	July 15, '14		July 15, '15	3,000 00
Pierson Roeding & Company	July 15, '14		July 15, '15	1,500 00
General Electric Company	July 10, '13	July 10, '14	Aug. 25, '15	4,500 00
General Electric Company	July 10, '13	July 10, '14	Sept. 15, '15	7,500 00
Chas. C. Moore & Co., Eng.	Aug. 15, '13	July 15, '14	Sept. 15, '15	5,000 00
John A. Roeblings Sons Co. (of California)	Aug. 15, '13	July 15, '14	Aug. 15, '15	1,500 00
John A. Roeblings Sons Co. (of California)	Aug. 15, '13	July 15, '14	Aug. 15, '15	1,000 00
Total				$26,000 00

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By an order dated July 21, 1914 (Decision No. 1678), this Commission authorized applicant to renew, among others, the following notes:

Payee	Date of note	Date of maturity	Amount
General Electric Company	July 10, '13	July 10, '14	$7,617 35
General Electric Company	July 10, '13	July 10, '14	8,782 60
Chas. Moore & Company, engineers	Aug. 15, '13	Aug. 15, '14	10,134 89
John A. Roeblings Sons Co. (of California)	Aug. 15, '13	Aug. 15, '14	2,528 15

Applicant reports that during the past year it has paid $3,117.35 and $1,282.60 respectively on the notes payable to General Electric Company; $5,134.89 on the note payable to Chas. C. Moore and Company, engineers, and $28.15 on note payable to John A. Roeblings Sons Company (of California). The notes which applicant now desires to issue to the parties just mentioned, represent unpaid balances of notes which have heretofore been authorized by this Commission.

Applicant also asks this Commission to confirm a one-year note for $1,000.00 payable to Diamond Match Company. This note was originally given on February 15, 1914. On February 15, 1915, the note was extended to August 25, 1915, without authority from this Commission.

It is the intention of applicant to pay the note on August 25, 1915.

I herewith submit the following form of order:

ORDER.

Oro Electric Corporation having applied to this Commission for authority to issue its promissory notes in renewal of the notes, enumerated in the foregoing opinion, and for an order approving a note executed to Diamond Match Company, and a hearing having been held,

It is hereby ordered that Oro Electric Corporation be and it is hereby authorized to issue its promissory notes in renewal of the following promissory notes:

Payee	Date of original issue	Date of renewal	Date due	Amount
Standard Oil Company of California	July 15, '14	----------	July 15, '15	$2,000 00
Standard Oil Company of California	July 15, '14	----------	July 15, '15	3,000 00
Pierson Roeding & Company	July 15, '14	----------	July 15, '15	1,500 00
General Electric Company	July 10, '13	July 10, '14	Aug. 25, '15	4,500 00
General Electric Company	July 10, '13	July 10, '14	Sept. 15, '15	7,500 00
Chas. C. Moore & Co., Eng.	Aug. 15, '13	July 15, '14	Sept. 15, '15	5,000 00
John A. Roeblings Sons Co. (of California)	Aug. 15, '13	July 15, '14	Aug. 15, '15	1,500 00
John A. Roeblings Sons Co. (of California)	Aug. 15, '13	July 15, '14	Aug. 15, '15	1,000 00
Total	----------	----------	----------	$26,000 00

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It is hereby further ordered, that Oro Electric Corporation be given, and hereby is given, authority to issue a note for $1,000.00 payable on August 25, 1915, to Diamond Match Company, in lieu of note for $1,000.00, payable on August 25, 1915, to said Diamond Match Company, which note was renewed without authority from this Commission.

It is hereby further ordered, that the authority herein given is given upon the following conditions and not otherwise:

1. The face value of the notes issued shall not exceed the face value of the notes renewed.
2. The rate of interest of the notes issued shall not exceed 6 per cent per annum, nor the term of any note extend beyond July 15, 1916.
3. Within thirty days after the renewal of any note or notes in accordance with this order, applicant shall file with this Commission a verified report, showing the name of the payee, the date of renewal, the date of maturity, the rate of interest and the face value of the note or notes.
4. The authority herein granted is conditioned upon the payment of the fee prescribed under the Public Utilities Act as amended.
5. The authority herein given shall apply only to such note or notes as may be renewed on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION No. 2605.

IN THE MATTER OF THE APPLICATION OF THE DEL NORTE PEOPLES TELEPHONE COMPANY FOR CONSENT TO THE RENEWAL OF A CERTAIN NOTE.

Application No. 1771.

Decided July 16, 1915.

Applicant authorized to renew for a period of not to exceed one year, a note in the sum of $1,000.00, bearing interest at 8½ per cent, and to execute a chattel mortgage covering its property as security therefor.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this application, Del Norte Peoples Telephone Company asks for authority to renew a note for the sum of $1,000.00 and to execute a chattel mortgage to secure the payment of said note.

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Applicant reports that on January 11, 1911, in order to acquire a telephone exchange, located in Crescent City, Del Norte County, California, it had to borrow $1,500.00 from the Bank of Crescent City. As an evidence of its indebtedness, applicant executed its one-year 8½ per cent promissory note for the principal sum of $1,500.00. On July 16, 1913, applicant reports that it paid $500.00 on said note, leaving a balance of $1,000.00 unpaid. The note is secured by a chattel mortgage.

In its annual report for the year ended December 31, 1914, applicant reports assets and liabilities as follows:

Assets.

Fixed capital	$11,581 21
Cash and deposits	704 75
Accounts receivable	1,221 89
Total assets	$13,507 85

Liabilities.

Capital stock outstanding	$7,942 50
Funded debt	1,350 00
Bills payable	50 00
Accounts payable	615 50
Other current liabilities	160 19
Taxes accrued	197 46
Interest accrued	159 01
Other liabilities accrued	58 02
Surplus invested in plant	2,651 16
Surplus uninvested	324 01
Total liabilities	$13,507 85

The annual report for the year ended December 31, 1914, shows the following earnings and expenses:

Operating revenues		$6,977 40
Operating expenses		5,657 53
Net operating revenues		$1,319 87
Less—Uncollectible operating revenues	$147 62	
Less—Taxes assignable to operation	197 46	
Total deductions		$345 08
Operating income		$974 79
Non-operating revenues		23 60
Gross income		$998 39
Deductions from gross income—		
Rent	$220 00	
Interest	109 32	
Miscellaneous	18 22	
Total deductions from gross income		347 54
Net income for year		$650 85

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I herewith submit the following form of order:

ORDER.

Del Norte Peoples Telephone Company having applied to this Commission for authority to renew for a term of one year, a note for the principal sum of $1,000.00, payable to Bank of Crescent City, with interest at 8½ per cent per annum, and for authority to execute a chattel mortgage to secure said note, and a hearing having been held;

It is hereby ordered that Del Norte Peoples Telephone Company be given, and hereby is given authority to renew for a period not exceeding one year, a note for the principal sum of $1,000.00, payable to Bank of Crescent City with interest at the rate of 8½ per cent per annum.

It is hereby further ordered that Del Norte Peoples Telephone Company be given, and hereby is given authority to execute a chattel mortgage to secure the payment of the note herein authorized.

The authority herein given is given upon the following conditions and not otherwise:

1. Applicant shall report to this Commission the name of the payee, the date of issue, the date of maturity, the rate of interest, and the face value of the note, within thirty days after the renewal of the note herein authorized.
2. Applicant shall file with this Commission a copy of the chattel mortgage herein authorized to be executed within thirty days after its execution.
3. The authority herein granted is conditioned upon the payment of the fee prescribed by the Public Utilities Act as amended.
4. The authority herein given shall apply only to such notes as may be issued on or before September 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION No. 2606.

IN THE MATTER OF THE APPLICATION OF THE BROOKDALE LAND COMPANY FOR AN ORDER AUTHORIZING INCREASE AND ADJUSTMENT OF RATES FOR THE SALE OF WATER IN BROOKDALE, SANTA CRUZ COUNTY, CALIFORNIA.

Application No. 1477.

Decided July 16, 1915.

Brookdale Land Company, contending that its water system serving the town of Brookdale is not earning sufficient to cover operating expenses, applies for permission to establish an increased schedule of rates, to which a number of

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the consumers object, claiming that as they occupy their houses only a short period of each year they should not be obliged to pay a rate equal to consumers using water the year round, in connection with which it is held that as the water company must maintain its system so as to have a supply of water available at all times and the investment being as large as though water was used continuously, no consideration can be given to such claims.

Held, That the present revenues of applicant are insufficient to cover operating expenses, accordingly a new schedule of rates established together with rules and regulations to become effective within thirty days, such rates to apply to all consumers receiving water through applicant's system irrespective of such clauses as may appear in their deeds establishing a different rate or permitting them to take water free of charge.

H. L. Breed, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner*.

This is an application of the Brookdale Land Company, a corporation, for authority to increase the rates to be charged for water, and establishing rules and regulations to govern the distribution and sale of water to the inhabitants of Brookdale, Santa Cruz County, for domestic, irrigation and fire protection purposes. The application alleges in effect that the present rates charged for water are inadequate and insufficient to provide for operating expenses, depreciation and interest on investment in the system of applicant.

Applicant asks that the following rates be established:

(1) Eight dollars annually to be paid in advance by each consumer receiving fire protection in addition to domestic service.

(2) Six dollars annually to be paid in advance by each consumer who does not receive fire protection.

(3) In addition to the above charges, the following monthly rates for water furnished:

(*a*) Metered service—75 cents for first 5,000 gallons or less; 15 cents for each 1,000 gallons or fraction thereof in excess of 5,000 gallons up to 15,000 gallons.

(*b*) Flat rates—75 cents per month per connection.

Brookdale is a summer resort in the Santa Cruz mountains and at present consists of approximately 200 summer cottages, one store, two hotels, a post office, a fish hatchery, and a railroad station.

In 1899 streets were laid out and lots placed on sale by Sarah A. Grover and Catherine F. Logan, predecessors in interest of the Brookdale Land Company, and the owners proceeded to place the lots on the market. A crudely equipped water system was constructed by the owners of the land company to take water from Clear Creek, which water was delivered free to the early settlers or purchasers of land.

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The early purchasers of lots were by their deeds granted perpetual use of the water system at that time in operation. The first system established consisted of a small diverting dam in Clear Creek, and a small quantity of pipe which conducted the water to a tank of about two thousand gallons capacity. The language of the deeds to six of the first purchasers, in so far as it refers to water, is as follows:

> "It is also hereby granted to said second party, the right to take and use free of charge, such of the water of Clear Creek as may be necessary for household or stable purposes and for irrigating ground and lawn on such premises only, and for that purpose may tap any reservoir or tank of said party of the first part at their own expense and take water therefrom for said purposes."

The next twenty conveyances are identical with the first six excepting that in addition the right to tap mains is granted.

These conveyances and the water privileges thereunder clearly were applicable to the system as it then existed. That system, which is hereinafter referred to as the "old system," is now practically obsolete, and has never become a part of applicant's public utility property, and the contracts for the free water under the terms of the deeds are not involved nor accepted as an obligation on the present system for which the fixing of rates is requested, as the present system, hereinafter designated the "utility system," is obligated to make delivery of water to the consumers.

In 1900, the old system being found inadequate, a new system was constructed and a charge of $3.00 per year established. This was the initiation of the present utility system.

The applicant, Brookdale Land Company, was incorporated on or about June 1, 1908, and soon thereafter proceeded to construct the present system herein referred to as the utility system, which has since been enlarged and improved, the applicant taking water to supply its present system from the waters of Clear Creek, diverting the same into two small concrete reservoirs, from the lower of which it enters the distribution system.

An examination of the various deeds from said Sarah A. Grover, Catherine F. Logan, J. H. Logan and the Brookdale Land Company, shows a great variety of language concerning the right to use water. In some of the deeds perpetual right to the use of water was conveyed; in others a use for a fixed period at a certain rate was granted; and in all, eleven different methods of conveying such privileges are employed by the different grantors to the purchasers of said lots.

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The following table sets out the rates of the various purchasers as acquired under their deeds with regard to the use of water:

Contractual terms	Contractual period	Date of expiration of contract	Annual rate	Number users paying rate
Right to take water from old system	Not fixed	--------	Free	6
Right to tap reservoir or main, old system	Not fixed	--------	Free	20
Right to take and use from the mains of the utility system for domestic use and irrigation	Not fixed	--------	$3 00	4
Right to take and use from the mains of the utility system for domestic use	Not fixed	--------	3 00	18
Right to take and use from the mains of the utility system	Perpetually	--------	3 00	2
Right to take and use from the mains of the utility system	5 years	1916	5 00	24
Right to take and use from the mains of the utility system	5 years	1917	5 00	21
Right to take and use water from mains of the utility system	Not fixed	--------	Free	6
Water not mentioned in deeds, or contracts have expired	----------	----------	--------	72
Total	----------	----------	--------	173

In addition to the above, Mrs. Rosa Meyers takes free water from Myers Creek under contract, but as this consumer is not supplied from the utility system, her rates are not involved herein.

All the consumers, with the exception of four, are summer residents whose stay in Brookdale is generally between two and four months continuously, but many of whom spend occasional week ends throughout the year.

A public hearing was held in this application at San Francisco on March 22, 1915, at which time some fifteen consumers appeared to protest against the proposed increase, the principal objection being that should the proposed rates go into effect the contracts entered into in good faith between the Brookdale Land Company and its consumers will be invalidated.

That this Commission has the right to fix rates which may be charged by public utility water companies, contracts to the contrary notwithstanding, need not be here again stated, as the Commission has, in Decision No. 536 (Vol. 2, p. 464, Opinions and Orders of the Railroad Commission of California), and in many other decisions, declared and exercised that right.

To countenance the free use of water from the utility perpetually, or to approve a rate greatly disproportionate to a reasonable rate by any considerable number of consumers, would necessarily result in improper discrimination, and would render it necessary for non-contract holding consumers to pay excessive rates to insure the continuance of the utility.

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In determining a reasonable rate herein, it is upon the assumption that all consumers are to pay the established rates without discrimination.

It is not necessary for this Commission to pass upon the rights existing between the early settlers who acquired certain rights to take water from Clear Creek under the terms of their deeds, as those rights are separate and distinct from the right of consumers to demand service from the present utility system. It appeared at the hearing, however, that many of the so-called early settlers, who enjoyed the right under their deeds to take water from Clear Creek under the old system, have assumed the right to take water from the utility system without paying rates therefor. While the right of these consumers to take water from Clear Creek or from the old system, has not been denied by the applicant, applicant does insist, and I think correctly, that when they claim the right of enjoyment of the present system, that is the utility system, they should pay rates as do other consumers, regardless of the existing contracts.

At the hearing of this application the Commission's hydraulic engineers submitted a valuation evidencing estimated cost of property depreciated to be $18,997.00 exclusive of water rights, in which applicant submitted that the cost had been $1,184.00, and an annual depreciation of $342.00. The same engineers estimated $860.00 as the annual maintenance and operating expenses. The gross operating revenue for 1914 as shown by the books of the company, is $728.00. It is apparent, therefore, that the present rates are insufficient to pay the operating expenses of the system.

At the hearing it was urged, in effect, by some of the consumers, that inasmuch as they occupied their cottages for a very limited period during the year, that a water rate which would be fair and reasonable to permanent consumers, would be excessive under existing conditions. This fact has been borne in mind in this case; but on the other hand, it should also be remembered that the investment is continuous the year around, and the maintenance expense is as great in the winter months when there are practically no consumers, as in the summer, if indeed, they are not greater in the winter months, due to floods and other difficulties attending a water system in the mountains. It should also be remembered that while demand is made of the water system for but a comparatively short period during the year, that the obligation to be ready to serve is continuing upon the utility during the entire year.

Applicant requests a rate of two dollars per year for fire protection, but at the hearing some of the consumers declared that the fire protection afforded by the utility was inadequate and did not justify a

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rate being charged therefor. In my opinion no rate should be charged for fire protection unless such protection is requested by the consumer.

I find as a fact that the rates, rules and regulations of the Brookdale Land Company, in so far as they differ from the rates, rules and regulations herein found reasonable, are unjust and unremunerative, and the rates, rules and regulations as set out in Exhibit A, attached hereto and made a part hereof, are hereby found to be just and reasonable.

I submit the following form of order:

ORDER.

Brookdale Land Company, a corporation, having applied to the Railroad Commission for permission to increase rates charged its consumers for water and for the establishment of rules and regulations, and a public hearing having been held and the Commission being fully advised in the premises,

It is hereby found as a fact by the Railroad Commission of the State of California that the rates and rules and regulations of the Brookdale Land Company, in so far as they differ from the rates, rules and regulations herein found reasonable, are unjust and unremunerative, and the rates, rules and regulations set out in Exhibit A attached hereto and made a part hereof are hereby found to be just and reasonable; and basing its order upon such finding of fact, and upon the other findings of fact set forth in the opinion preceding this order.

It is hereby ordered by the Railroad Commission of the State of California that Brookdale Land Company, a corporation, put into effect the rates, rules and regulations set out in Exhibit A, attached hereto and made a part of this order, within thirty (30) days from the date of this order.

It is further ordered that in establishing the rates herein provided that all contracts, grants and agreements for privileges to take water, which were acquired by deed or otherwise from Brookdale Land Company, Sarah A. Grover, Catherine F. Logan or J. H. Logan, be disregarded.

Nothing in this order contained shall prohibit or interfere with the contractual right of any purchaser or purchasers to take water from Clear Creek or the equipment of what is, in the opinion heretofore set out, referred to and described as the "old system," provided Brookdale Land Company shall not be obligated in any manner to perform any service in connection with said right, and if said persons entitled to said privilege of taking water from said old system, do take water through said Brookdale Land Company or its equipment, the rates herein established shall be applicable to such person or persons.

It is further ordered that the rates herein fixed for fire protection shall be charged only to such consumers as make application to said Brookdale Land Company for such fire protection.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of July, 1915.

EXHIBIT A.

Rule 1. Before water is supplied to or turned off from any premises written application therefor must be made to the company.

Rule 2. Meter (if any) and service pipe shall be installed at the company's expense.

Rule 3. No allowance shall be made in water rates by reason of non-occupation of the premises where the water is supplied unless the company has been notified to discontinue such service.

Rule 4. The company shall have the right in an emergency to turn off or on the water from the pipes without notice. The company will make all possible effort to notify its consumers in advance when it is necessary to turn off the water from its mains or laterals.

Rule 5. No consumer shall provide water to any person, company or corporation other than the occupant of the premises of said consumer except upon written permission of the company.

Rule 6. In all cases of the non-payment of the water rates notice may be given that the supply will be shut off, and ten days after such notice is given, if the bill has not been paid, the supply may be shut off and the water need not again be let on, except on the payment of the amount due together with the sum of $1.00.

Rule 7. The following are hereby declared to be the effective rates:

(1) Six dollars annually per connection to be paid in advance.

(2) Two dollars annually for each consumer who desires fire protection.

(3) In addition to the annual charge the payment for each month during which water is used is as follows:

(*a*) Metered service:

75 cents for 5,000 gallons or less.

15 cents for each 1,000 gallons or fraction thereof for next 10,000 gallons.

12 cents for each 1,000 gallons or fraction thereof used in excess of 15,000 gallons.

(*b*) Flat rates:

75 cents per month per connection.

DECISION No. 2607.

IN THE MATTER OF THE APPLICATION OF THE UNION HOLLYWOOD WATER COMPANY AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF LOS ANGELES FOR AN ORDER AUTHORIZING THE LEASE OF AND OPTIONS TO PURCHASE, PUBLIC UTILITY PROPERTY.

Application No. 1772.

Decided July 16, 1915.

Union Hollywood Water Company applies jointly with the City of Los Angeles for permission to lease that portion of its water system serving consumers within the limits of Los Angeles to said city for a monthly rental of $20,000.00 with

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an option to purchase for the sum of $530,408.00 and also with an option to purchase the remaining portion of such system for the sum of $38,000.00 which application is granted, provided the city shall assume all obligations for service at present incumbent upon the water company and also that such transfer shall not in any way affect the Commission's jurisdiction over rates outside the city limits.

Sheldon Borden and *Walter F. Hass*, for the Union Hollywood Water Company.

W. B. Mathews and *William B. Himrod*, for the City of Los Angeles.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner*.

Union Hollywood Water Company is engaged in the distribution of water in the western portion of the city of Los Angeles, and also, in territory lying to the west and south of said city, in the county of Los Angeles. In this application Union Hollywood Water Company seeks the authority of this Commission under section 51 (*a*) of the Public Utilities Act to lease a portion of this system to the city of Los Angeles, the latter to have, also, an option to purchase said portion of the company's system. The company asks authority also to give to the city an option to later purchase that portion of the system which is not leased. The city of Los Angeles, through its board of public service commissioners, has joined in this application.

Attached to the application as "Exhibit B" is an agreement executed between Union Hollywood Water Company and the board of public service commissioners of the city of Los Angeles, under the terms of which the company agrees to lease a portion of its system to the city, with an option to purchase, and also grants to the city an option to purchase that portion of the system which is not leased. The consent of the Commission is sought to the transactions which are the subject of the agreement attached to the application as "Exhibit B."

That agreement describes the property which is the subject thereof under the head of (1) Leased System and (2) Retained System, as follows:

Leased System.

Item 1. Pipe system within the present corporate limits of the city of Los Angeles.

Item 2. Pipe system west of the present corporate limits of the city of Los Angeles, and south of Wilshire boulevard.

Item 3. Fourteen-inch steel riveted pipe on Santa Monica boulevard extending west from present city limits to Fairfax street;

Eighteen-inch steel riveted pipe on Fairfax street extending north from Santa Monica boulevard to the present city limits;

Eighteen-inch steel riveted pipe on Santa Monica boulevard extending westerly from Fairfax street to the northerly line of the water company's Sherman lands;

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That certain pipe consisting partly of four-inch O. D. casing and partly of two-inch standard screw pipe and ten service and nine meters appurtenant thereto; said pipe extending from the northerly terminus of the four-inch main on La Brea avenue, westerly for a distance of about 488 feet, and easterly for a distance of about 380 feet and northerly for a distance of about 260 feet.

Item 4. Services and meters in place, fire hydrants and rights of way appurtenant to the foregoing Items 1 and 2, and rights of way appurtenant to the foregoing Item 3.

Item 5. Right of way wherein so-called "Soldiers Home pipe" is laid.

Item 6. Maps and books appurtenant to said leased system above described, and also personal property consisting of tools, trucks, automobiles, live stock, etc., a list of said personal property to be hereafter made out, approved by the president of the said water company and chief engineer of said board, and identified by their signatures and thereafter to constitute a part of this indenture.

Item 7. The real estate located at the corner of Franklin and Los Palmas avenues, now occupied by the pipe yards and shop of the water company, being lot ten (10) in block two (2), Hollywood Ocean View tract, according to map thereof recorded in book 1, page 62 of maps, records of Los Angeles County, California.

Retained System

Pipe system west of present corporate limits of the city of Los Angeles, and north of Wilshire boulevard (excepting the property embraced in its Item 3 aforesaid), said retained system comprising the remaining portion of the distributing system of said Water company, together with services, meters and rights of way appurtenant to said retained system.

The consideration for the lease of the property is $20,000.00 per month; $25,000.00 is to be paid upon the execution of said agreement as consideration of the option of the city to purchase the entire system at any time to and including November 30, 1916. The price at which the leased system is to be sold in case the option is exercised, is $530,408.00, with interest at the rate of 6 per cent per annum from June 1, 1915, until the date of payment. The price at which the retained system is to be sold in case the option is exercised is $38,000.00, to which is to be added the reasonable value of all renewals, improvements, additions (including services and meters), extensions and betterments of or to said retained system, made by said water company since June 2, 1915, and prior to the exercise of the option and consummation of the purchase, exclusive, however, of certain specified trunk lines.

I find no objection to the transactions contemplated in this agreement, provided that the lessee will file with this Commission a stipulation that it will assume all the obligations of service from the leased system, which at present rest upon Union Hollywood Water Company,

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and will give adequate and complete service to the consumers from this leased system. And also provided, that it is clearly understood that the Commission's approval to the arrangement contemplated in this contract in no way restricts the jurisdiction of the Commission to completely regulate the rates and service for supply of water outside the municipal limits of Los Angeles.

I accordingly recommend that this application be granted, and submit the following form of order:

ORDER.

This proceeding having come on regularly for hearing and the Commission being duly advised,

It is hereby ordered that Union Hollywood Water Company be, and it is hereby authorized to lease and to sell its water system in accordance with the terms and conditions of that certain contract executed between Union Hollywood Water Company and the board of public service commissioners of the city of Los Angeles, a copy of which contract is attached to the application in this proceeding and marked "Exhibit B," upon the following condition, and not otherwise:

This order shall not become effective until the city of Los Angeles shall have filed with this Commission a stipulation, that it will assume all the obligations of service from the leased system, which at present rest upon Union Hollywood Water Company, and will give adequate and complete service to the consumers from this leased system.

It must be clearly understood also that this order of the Commission in no way restricts or impairs the jurisdiction of the Commission to completely regulate the rates and service for supply of water outside the municipal limits of the city of Los Angeles.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION No. 2608.

IN THE MATTER OF THE APPLICATION OF THE OLETA TELEPHONE COMPANY FOR PERMISSION TO CHARGE A FEE FOR MESSAGES SENT OVER LINE OF THE OLETA TELEPHONE COMPANY.

Application No. 1627.

Decided July 16, 1915.

Applicant operates a telephone line connected with the Plymouth exchange of the Pacific Telephone Company and serving twenty patrons who pay the regular farmer line rates charged by the Pacific Company. It now proposes to establish a charge of 15 cents per call for all calls originating and terminating upon its

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own line and 25 cents for all other calls, such charge to be in addition to the rates paid the Pacific Company, and it appearing that such charges are not justified, application denied.

Chas. Bloom and *Joseph Pigeon,* for Applicant.

Jas. T. Shaw, for Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The Oleta Telephone Company, the applicant in this proceeding, purchased what is commonly known as a farmer telephone line from the Volcano Telephone Company in April, 1913. The line extends from Oleta, and the country district adjacent to Oleta, to Plymouth, in Amador County, and is connected at the latter point with a central exchange which is owned and operated by The Pacific Telephone and Telegraph Company. The Oleta Telephone Company has no central exchange or switchboard of its own. There are now twenty telephones in use on the line, each receiving switching service through this connection with the Plymouth exchange for which the Pacific company charges the rate ordinarily charged by it at all of its similar exchanges for farmer line service.

The Oleta Telephone Company is not an incorporated company. To all intents and purposes its members are subscribers of The Pacific Telephone and Telegraph Company, as fully entitled, under the rates which that company charges, to service with all other subscribers of the Plymouth exchange without the payment of any additional charge as they would be if they were located in Plymouth and were connected with that company's exchange lines. In other words, the rates which The Pacific Telephone and Telegraph Company charges for their present service entitles them to the same Plymouth exchange switching privileges that all other Plymouth subscribers have.

In its application the Oleta Telephone Company asks the Commission to allow it to put into effect a charge of 15 cents for all calls originating and terminating on its own line, and a charge of 25 cents per call for all calls originating at any of its twenty stations and terminating at Plymouth, and a charge of 25 cents per call for all calls originating on The Pacific Telephone and Telegraph Company's lines and terminating on the applicant's line. The purpose of the applicant in desiring to make these charges, as stated at the hearing, is to provide revenue with which to help meet operating and maintenance charges and to enable it to collect from those who are not members of the company and who make use of the line for service which they now get without any compensation whatever to the company.

So far as operating and maintenance charges are concerned, it may be observed that not only in the case of this applicant, but also in the

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case of many other owners of farmer lines similarly owned and operated, the rates which its members pay for their service are presumed to be sufficiently lower than they would be required to pay for service of other classes in connection with which the company furnishing the service provides the necessary investment in equipment and bears the maintenance and operating charges, to fully offset those charges and to pay them interest on their investment. In other words, the difficulties with which this company believes itself to be confronted and which it is seeking to overcome by imposing an additional burden upon its members are presumed to be taken care of by the low rates afforded for farmer line service. As to the matter of the use of its line by those who are not members of the company and who have contributed nothing toward the cost of the line, there is apparently nothing to prevent its members refusing the use of their telephones in such cases if they desire to do so.

The situation involved in this case is not an uncommon one in the experience of telephone companies of this character, but to grant permission to impose such charges in such cases would result not only in unjustly increasing the charges for telephone service, and in this particular case in denying the members of the applicant company the privileges to which The Pacific company's present rates entitle them, but would also have the further effect of constituting each telephone connected with such lines a public telephone toll station at all times subject to public use regardless of location and regardless of the wishes of the party in whose premises the station may be located. The reasonableness of The Pacific company's rates for this service are not at issue in this proceeding, but if they are proper rates for the service involved, to permit the former result would be unjust and unreasonable, and it is plain that this Commission can not require private property to be devoted to the public use. I am accordingly of the opinion that this application should be denied and shall so recommend to the Commission.

I submit the following form of order:

ORDER.

Application having been made to this Commission by the Oleta Telephone Company, a farmer telephone company, for permission to charge certain rates for messages passing over its line to and from Plymouth, Amador County, and for all messages originating and terminating on its line, and a public hearing having been held, and it appearing to the Commission, as set forth in the preceding opinion, that said application should be denied,

It is hereby ordered that the application herein be and it is hereby denied.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of July, 1915.

DECISION NO. 2609.

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED SECURITIES COMPANY FOR PERMISSION TO ISSUE TWENTY-YEAR SIX PER CENT BONDS IN THE SUM OF ONE HUNDRED FIFTY THOUSAND DOLLARS, SECURED BY TRUST DEED AND MORTGAGE UPON PROPERTY NOT USEFUL OR NECESSARY TO A PUBLIC UTILITY.

Application No. 1539.

Decided July 19, 1915.

Consolidated Securities Company, engaged principally in the real estate business, though owning a small water utility, applies for permission to issue bonds of the face value of $150,000.00 and to pledge as security therefor certain parcels of real estate, proceeds to be used partly in the retirement of promissory notes, the balance for additions and betterments. Application granted, such bonds to be sold at not less than 80 and all expenditures for betterments to be first approved by the Commission.

W. J. Williams, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Consolidated Securities Company, operating in Los Angeles County, for authority to issue $150,000.00 of 20-year 6 per cent bonds to retire outstanding indebtedness and to provide for additions and betterments to its property.

Applicant is engaged primarily in the real estate business, and is only subject to the jurisdiction of this Commission by reason of the ownership of a small water system in San Fernando, Los Angeles County.

Applicant for some time past has sought to separate its public utility business from its other business, but has so far been unsuccessful in persuading the Maclay Rancho Water Company, the original owner of the property, to permit the severance of the water system.

Consolidated Securities Company states that the proceeds from the present bond issue are to be used for its general real estate business and that none of the property to be mortgaged is public utility property.

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It is proposed to issue the $150,000.00 of bonds in the following denominations:

1001 of the denomination of $25.00 each.
500 of the denomination of 50.00 each.
333 of the denomination of 75.00 each.
750 of the denomination of 100.00 each.

The property which the company proposes to mortgage as security for these bonds consists of various small parcels of land located in Los Angeles County. An appraisement of the property, made by a committee appointed by the directors of the company and consisting of a member of the board of directors, a stockholder and an independent real estate dealer, fixed its total value at $188,955.00. This property is now subject to various encumbrances, generally in the form of short term notes secured by first mortgages, a number of which have matured or are about to mature. Applicant states that these encumbrances represent part of the purchase price of the property. The total amount of this indebtedness at the present time is $53,313.06, and the rates of interest thereon vary from 7 to 10 per cent per annum.

It is applicant's intention to set aside $90,000.00 of the bonds to pay off this indebtedness, thereby reducing its average rate of interest and giving itself additional time in which to improve its properties and put them on an income basis throughout. The balance of the bonds will be used for additions and betterments to these properties.

The annual report of the company, as filed with the Commission for the year ending December 31, 1914, shows that the company has outstanding 146,299 shares of stock of the par value of $1.00 per share out of a total authorized issue of 500,000 shares. During the past year a 5 per cent assessment was levied upon the stock. Previous to this time the company had paid dividends as follows:

Dividends.

	Capital	Per cent	Amount dividend
No. 1, June 30, 1912	$25,026 00	4	$1,001 04
No. 2, September 30, 1912	60,593 00	2	1,211 86
No. 3, December 31, 1912	90,764 00	2½	2,269 21
No. 4, March 31, 1913	115,589 00	2½	2,889 84
No. 5, June 30, 1913	123,593 00	2½	3,089 97
No. 6, September 30, 1913	139,058 00	2½	3,476 61

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The company has no bonds outstanding at the present time. Its balance sheet, as of December 31, 1914, as set forth in Exhibit "A" attached to the original application herein, is as follows:

Assets.		
Cash on hand and in banks		$1,472 30
Balance unpaid on subscriptions to capital stock		13,444 40
Accounts receivable		9,162 66
Notes receivable		11,650 10
Interest due and accrued		1,382 47
Stock of inter-companies		64,629 40
Miscellaneous securities		5,571 55
Real estate less encumbrances		93,608 59
San Fernando public utilities and acreage		187,713 85
Miscellaneous assets		652 59
Total		$389,287 91
Liabilities.		
Accounts payable		$12,195 96
Interest unpaid and accrued		1,231 68
Bills payable		4,310 60
McClay Rancho Water Company contract		171,000 00
Capital and Surplus.		
Capital stock outstanding	$128,755 00	
Capital stock subscribed	25,878 00	
Premiums on capital stock sales and subscriptions	15,098 08	
Assessment No. 1 paid	7,762 20	
Surplus from assessment sales and surrenders	29,521 75	
	$207,015 03	
Less net deficit from operations	6,465 36	
		200,549 67
Total		$389,287 91

The company's surplus account for the year ending December 31, 1914, as shown by Exhibit "A" attached to the application is as follows:

Balance, December 31, 1913	$3,898 90	
Net surplus from operations from San Fernando public utilities	925 62	
		$4,824 52
Net loss from operations for the year ending December 31, 1914		11,289 53
Net deficit from operations to December 31, 1914		$6,465 36

While this Commission would ordinarily require a more complete showing as to the value of the security behind these bonds, it is my opinion that the Commission should adopt a liberal attitude toward this company, by reason of the fact that the property involved is not public utility property and the Commission's jurisdiction arises only through the ownership of a small water plant.

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The hearing in this application was originally held on March 9, 1915. Subsequent to the hearing it developed that the company selected by the applicant to act as trustee was not authorized to serve in such capacity and it became necessary for the applicant to make other arrangements. These arrangements have now been completed and the matter has been duly submitted.

After a consideration of the evidence submitted by the applicant, I recommend the following form of order:

ORDER.

Consolidated Securities Company having applied to this Commission for authority to issue $150,000.00 of 20-year 6 per cent bonds, as hereinbefore set forth,

And it appearing to this Commission that the purposes for which applicant proposes to issue these bonds are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Consolidated Securities Company be, and it is hereby, authorized to issue $150,000.00 of 20-year 6 per cent bonds for the purpose of refunding indebtedness upon the property mortgaged under said bond issue in the total sum of $58,313.06, as more fully set forth in paragraph (*d*) of Exhibit "A," attached to the original application, and for the purpose of providing for additions and betterments to the mortgaged property.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Before any of the bonds herein authorized are issued, the applicant shall submit to this Commission for its approval and supplemental order, copy of the deed of trust securing said bonds;

2. Before any of the bonds authorized hereunder shall be issued for additions and betterments, applicant shall secure from this Commission a supplemental order approving such issue;

3. The bonds issued hereunder shall be sold at a price which will net the applicant not less than 80 per cent of their face value in cash;

4. Consolidated Securities Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued; and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order;

5. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act;

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6. The authority herein granted shall apply only to bonds issued on or before July 31, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of July, 1915.

DECISION NO. 2610.

IN THE MATTER OF THE APPLICATION OF HERMOSA BEACH WATER CORPORATION FOR PERMISSION TO ISSUE BONDS TO REIMBURSE THE COMPANY'S TREASURY FOR EQUIPMENT AND EXTENSIONS ADDED TO CAPITAL INVESTMENT.

Application No. 1616.

Decided July 19, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

This Commission on June 22, 1915, having issued its order (Decision No. 2512) in the above entitled matter, authorizing the applicant herein to issue $8,000.00 of its first mortgage 6 per cent 10-year gold bonds upon certain conditions therein specified, including Condition No. 1, as follows:

> "1. None of the bonds herein authorized for the purpose of reimbursing applicant's treasury in the sum of $6,229.44 shall be issued until applicant shall have submitted to this Commission a full and complete statement showing that such sums have actually been expended out of the surplus of the Hermosa Beach Water Corporation, nor shall any of the bonds herein authorized be issued until the transfer of the properties of the Hermosa Beach Water Company to Hermosa Beach Water Corporation shall have been completed and until a supplemental order shall have been issued by this Commission approving the above mentioned statement and transfer of property."

And it now appearing that said transfer of property has been duly completed and it appearing further that said sum of $6,229.44 has been expended out of the surplus of Hermosa Beach Water Company and Hermosa Beach Water Corporation, and the applicant herein having filed a statement showing that said sum of $6,229.44 has been so expended,

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It is hereby found as a fact, that the Hermosa Beach Water Corporation has complied satisfactorily with Condition No. 1, heretofore mentioned, of said order of June 22, 1915, and basing its order upon this finding of fact,

It is hereby ordered that the showing made by this applicant of the expenditure of said sum of $6,229.44 from the surplus of the Hermosa Beach Water Company and the Hermosa Beach Water Corporation, and the showing made by this applicant of the transfer of the water plant from the Hermosa Beach Water Company to the Hermosa Beach Water Corporation be and the same are hereby approved.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of July, 1915.

DECISION NO. 2611.

IN THE MATTER OF THE APPLICATION OF MOJAVE NORTHERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE AND SELL ITS AUTHORIZED CAPITAL STOCK.

Application No. 1759.

Decided July 19, 1915.

Mojave Northern Railroad Company applies for permission to issue 500 shares of its capital stock of the par value of $100.00 per share for the purposes of constructing a line of railway from Victorville on the line of Santa Fe Railway Company to the quarries and lime deposits of the Southwestern Portland Cement Company, which latter company shall advance the cost of constructing such road, taking the stock at par. Application granted.

McNamee & McNamee, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by Mojave Northern Railroad Company for authority to issue 500 shares of its capital stock at not less than the par value thereof, or $100.00 per share. It is proposed to issue 5 shares to directors and 495 shares to the Southwestern Portland Cement Company.

Mojave Northern Railway Company was incorporated for the purpose of constructing a line of steam railway from Victorville on The Atchison, Topeka and Santa Fe Railway in San Bernardino County

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in a general northeasterly direction to a point in the northwest corner of section 11, township 6 north, range 4 west, S. B. M. At this point are located certain lime deposits and quarries owned by the Southwestern Portland Cement Company. The main line of the proposed railroad is indicated on a map filed in connection with the application and marked Exhibit "C." This main line will be approximately 5½ miles in length. A short branch or spur will be constructed as delineated on a map filed in connection with the application and marked Exhibit "D."

The projected line is to be part of an industrial enterprise which will embrace quarries, lime deposits and a cement plant to be constructed by the Southwestern Portland Cement Company near Victorville.

The applicant estimates that the line of railway with equipment, etc., will cost approximately $133,000.00. A detailed estimate of the cost has been filed in connection with the application to which reference is hereby made. The cost is to be defrayed by the Southwestern Portland Cement Company and for its outlay in the sum of $133,000.00 it proposes to take 495 shares of stock. I shall recommend that the order in this matter authorize the Southwestern Portland Cement Company to purchase the stock at not less than par so that if it desires hereafter to take out additional stock at par for the cost of the railway, it may do so.

This railway will be an industrial line, incidental to the general cement, lime and quarry business of the Southwestern Portland Cement Company. Accordingly, I recommend that the application be granted and submit the following form of order:

ORDER.

Mojave Northern Railroad Company having applied to this Commission for authority to issue 500 shares of its capital stock as specified in the foregoing opinion, and a hearing having been held, and it appearing that the purposes for which the applicant proposes to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Mojave Northern Railroad Company be granted authority, and it is hereby granted authority to issue 500 shares of its capital stock of the par value of one hundred ($100) dollars per share.

The authority herein granted is granted upon the following conditions and not otherwise:

1. The stock herein authorized to be issued shall be issued so as to net the applicant herein not less than the par value thereof.

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2. Four hundred and ninety-five shares of said stock shall be issued to the Southwestern Portland Cement Company and five shares of said stock shall be issued to persons designated by said Southwestern Portland Cement Company.

3. The proceeds derived from the sale of such stock shall be used for the purpose of constructing a line of railway from Victorville, San Bernardino County, to the quarries, etc., of Southwestern Portland Cement Company located in the northwest corner of section 11, township 6 north, range 4 west, S. B. M., with branch as proposed in the application herein; the construction of said line of railway with branch to be substantially in accordance with estimates submitted by the applicant in connection with the application herein.

4. Applicant shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds from the sale of said stock herein authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the terms and conditions of the sale of said stock, the moneys realized therefrom and the use and application of such moneys.

5. The authority herein given to issue stock shall apply to such stock as shall have been issued on or before June 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of July, 1915.

DECISION NO. 2612.

IN THE MATTER OF THE APPLICATION OF C. S. S. FORNEY, FOR AN ORDER PRELIMINARY UNDER SECTION 50 OF THE PUBLIC UTILITIES ACT, THAT AN ORDER WILL HEREAFTER ISSUE, FINDING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF SUCH RIGHT OR PRIVILEGE TO FURNISH THE INHABITANTS OF NEWMAN, STANISLAUS COUNTY, CALIFORNIA, WITH GAS FOR LIGHT, HEAT AND POWER, AS MAY HEREAFTER BE OBTAINED BY C. S. S. FORNEY OR BY A CORPORATION TO BE FORMED BY C. S. S. FORNEY.

Application No. 1681.

Decided July 16, 1915.

C. S. S. Forney applies for a certificate preliminary to the issuance of a certificate declaring that public convenience and necessity require the exercise of rights under a franchise authorizing the construction and operation of a gas distributing system in the town of Newman, though as yet no franchise has been obtained

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nor application made therefor and request having also been made upon applicant to submit additional data, *i.e.* estimated cost of putting such system in operation, probable number of consumers, plan of financing, none of which has been received and there being no grounds upon which application can be granted, same is dismissed without prejudice.

A. McDonald, for Newman Gas Company.

C. S. S. Forney, in propria persona.

Bradley V. Sargent, Henry W. Burkhart, for C. S. S. Forney.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by C. S. S. Forney for an order, under section 50, Public Utilities Act, preliminary to the issue of a certificate that public convenience and necessity require the exercise by him of such rights and privileges as petitioner may hereafter obtain for the furnishing of gas to the inhabitants of the town of Newman.

It appears that some five years ago a gas plant was established in the town of Newman, Stanislaus County, by one A. B. McDonald and associates, and that gas service was furnished to the inhabitants of that community for some sixteen months. Some time prior to the passage by the Legislature of the Public Utilities Act, and following an accident at the plant and the injury of one of its owners the plant was shut down and service discontinued. Since the discontinuance of the supply of gas, as above related, no attempt has apparently been made either to give service or to maintain the plant.

The original cost of the plant and distribution system at Newman can not be ascertained, but Mr. A. B. McDonald, the present owner, testified that it may have been between $16,000.00 and $17,000.00. It appears from the evidence that a large portion of the pipe originally laid was secondhand, and that, in all probability, a considerable portion, at least, of the distribution system would have to be reconstructed before it could be again used. The present plant equipment appears to be useless, and it would be necessary to install entirely new equipment.

Applicant alleges that he has an option to purchase the present physical gas properties, not including real estate, from McDonald for $2,500.00 cash, and proposes to install a new and modern plant and rehabilitate the distribution system at an expense roughly estimated as between $12,000.00 and $15,000.00.

Petitioner has neither secured nor applied for a franchise in the town of Newman, has made no adequate examination of the present gas properties, and apparently he has conducted no investigation to determine the amount of business available. Notwithstanding what appears to be an almost total lack of knowledge concerning the present property, and with indefinite plans for future development, petitioner asks that the Commission issue its preliminary order merely upon the showing

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that he has secured an option to purchase the existing properties presumably owned by Mr. McDonald, and that he or his associates or successors may, at some future time, apply for a franchise to serve the town of Newman.

Under the circumstances, and considering the matter in the light of the evidence introduced at the hearing, it is perfectly obvious that the Commission could make no other order than to dismiss the application. However, in order to be perfectly fair to petitioner, and although he requested only four days, he was allowed two weeks in which to prepare and submit to the Commission a statement giving the following information:

First—An estimate of the cost to rehabilitate and reconstruct the present distribution system and install new equipment.

Second—An estimate of the probable number of consumers to be supplied with gas and the rate proposed to be charged.

Third—A plan for financing.

At the expiration of the two weeks allowed for furnishing the additional information desired, no statement had been filed by petitioner, nor had any request been made by him for an extension of time. Notwithstanding the fact that petitioner's failure to comply with the Commission's request could have reasonably and properly been considered ample justification for dismissing the application forthwith, the Commission, desiring to give every opportunty to supply the necessary information, directed a communication to petitioner under date of June 29, 1915, asking when the information previously requested would be supplied. No reply was received to the communication above mentioned until July 15th, when a letter was received to the effect that the information requested would "probably" be forwarded during the next thirty days.

Inasmuch as petitioner's evasive statement as to the probable time required to comply with the requests heretofore made is not at all satisfactory, and in view of the fact that there has been submitted to the Commission absolutely nothing upon which to base an order such as that covered by the application, I recommend that the application be dismissed, and I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision,

It is hereby ordered that the above entitled application be, and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, the 19th day of July, 1915.

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Decision No. 2613, grade crossing; not printed. See end of volume.

DECISION NO. 2614.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF SANTA BARBARA TO RENEW PROMISSORY NOTE IN THE AMOUNT OF FIVE THOUSAND DOLLARS.

Application No. 1612.

Decided July 20, 1915.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

It is hereby ordered that the order heretofore made in this proceeding on May 10, 1915, be and the same is hereby, amended to authorize Home Telephone and Telegraph Company of Santa Barbara to issue, in addition to the notes authorized to be issued by said order, a note to the Bank of Santa Maria in the sum of $5,000.00, said note to be issued at a rate of interest not to exceed 7 per cent per annum, and for a term not to exceed January 2, 1917; said note to be issued to refund a note of applicant in the sum of $5,000.00 issued to the Bank of Santa Maria on January 2, 1915; said note further to be issued in accordance with all the conditions set forth in the order heretofore made in this proceeding on May 10, 1915.

Dated at San Francisco, California, this 20th day of July, 1915.

Decisions Nos. 2615, 2616, 2617, 2618, 2619, grade crossings; not printed. See end of volume.

DECISION NO. 2620.

PHOENIX MILLING COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 762.

Decided July 23, 1915.

Complainant alleges that defendant charged and collected a rate of 16 cents per 100 pounds on a shipment of meal from San Francisco to Sacramento when at the same time it had effective a rate of 13 cents per 100 pounds on the same commodity from San Francisco to Perkins, a point beyond Sacramento, that such charge was in violation of the provisions of the long and short haul

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clause and petitions for an award of reparation in the sum of $8.17. Defendant contends that as it had applied to the Commission for permission to continue such violations in effect, which application was pending with the Commission at the time of shipment, the rate collected was the lawful rate.

Held, That when permission is made to continue in effect violations of the long and short haul provisions of the Constitution and such application is granted, such permission does not prevent the Commission from subsequently declaring that such rate is unjust or discriminatory and awarding reparation thereunder. That though in the present case it is clearly shown that the rate collected was in excess of the lawful charge, complainant has not shown that it was damaged thereunder and that such excess charge was not added to the selling price of its product. Complaint dismissed without prejudice.

Complaints of this nature petitioning for reparation of a small amount, excepting the present case, most of which are initiated by claim agents on a basis of 50 per cent of the amount collected, which take up considerable time of the Commission and parties in interest, severely criticized.

George J. Bradley, for Complainant.

George D. Squires, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

The complainant in this proceeding is a corporation engaged in the handling of grain, meal and flour, and its principal place of business is at Sacramento. In its petition filed January 25, 1915, the complainant alleges that during the period from December 6, 1912, to February 24, 1914, there was shipped to it at Sacramento via defendant's line certain less-than-carload shipments of meal from San Francisco, on which there was charged and collected by defendant a rate of 16 cents per 100 pounds which was the fourth class rate then applying between San Francisco and Sacramento and which is still in effect. The complainant further alleges that at the time these shipments were made the defendant published and maintained a commodity rate of 13 cents per 100 pounds on meal in less-than-carload lots from San Francisco to Perkins, a point beyond Sacramento on defendant's Placerville branch, and the complainant contends that the charging of a higher rate to Sacramento than was contemporaneously in effect to Perkins subjected it to an undue discrimination and was in violation of the provisions of the Constitution and the Public Utilities Act prohibiting a greater charge for the transportation of property for a shorter than for a longer distance over the same line or route in the same direction. Reparation in the sum of $8.17 is asked, together with interest from the date of its collection.

While it is admitted by the defendant that the rates alleged to have been charged were in violation of the long and short haul provision of the Constitution it avers that prior to the time of the movement of the alleged shipments that it had made application to the Commission, in

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pursuance to the provisions of section 21 of article XII of the Constitution empowering the Commission upon application and in special cases after investigation to grant authority to deviate from the long and short haul rule, for a waiver of said provisions as to the rates from San Francisco to Perkins and other points on the Placerville branch, and that until that application was acted upon by the Commission the defendant was protected in its violation of that provision and that reparation should not now be awarded therefor. This is true in part, but only in part, for the reason that while this Commission, under its order of November 20, 1912, gave carriers permission to maintain the *status quo* existing at the time the Constitution was amended following the procedure of the Interstate Commerce Commission in similar matters, for practical reasons no guarantee was extended to the defendant by either the provisions of the Constitution or by order of this Commission that it would be excused for violating the long and short haul rule if, upon investigation, such deviation was not found reasonable or permissible.

Defendant denies that this complainant received the shipments alleged to have been received by it, or that it paid the freight charges thereon, or any part thereof, or that any of the rates mentioned in the complaint discriminated against complainant, or that complainant was damaged by the payment of freight charges alleged, or is entitled to an award of reparation.

Defendant's denial that complainant made the shipments alleged to have been made need not be considered seriously, as it was probably made on account of lack of information, and no testimony was offered at the hearing in support of such denial, whereas counsel for complainant at the hearing introduced a statement of shipments and stated that complainant had, in its possession, the paid freight bills as evidence that these shipments were made and the freight charges collected.

The questions whether the rates mentioned in the complaint discriminated against the complainant or whether complainant was damaged by the payment of freight charges alleged, and was consequently entitled to an award of reparation, are the questions which the Commission is called upon to decide in this case.

The rate of 13 cents per 100 pounds on meal in less-than-carload lots from San Francisco to Perkins was originally published and filed, in so far as the record of the Commission indicates, in defendant's Placerville Commodity Tariff No. 1, C. R. C. 113, which became effective on August 28, 1906, and was continued in effect in that or other publications as a non-intermediate rate until April 12, 1914, on which date it was made to apply as a maximum to intermediate points. During the entire period from December 6, 1912, to April 12, 1914, there was

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no commodity rate on meal in less-than-carload lots from San Francisco to Sacramento, and the class rate applying thereon was 16 cents per 100 pounds. Therefore, during the period in which it is alleged the shipments herein involved were made and until April 12, 1914, the rate from San Francisco to Sacramento, as compared with the rate from San Francisco to Perkins, was in violation of the long and short haul provision prohibiting the charging of a greater rate for a shorter than for a longer haul over the same line or route in the same direction. The record also discloses that the defendant, in pursuance to an order of the Commission issued on October 26, 1911, in Case 214, the long and short haul investigation, filed with this Commission on December 30, 1911, an application (Southern Pacific No. 59 in Case 214) asking authority generally to continue rates for the transportation of property from San Francisco to Perkins and points on the Placerville branch, as then shown in its Placerville Commodity Tariff No. 1, C. R. C. No. 113, lower than the rates concurrently in effect from or to intermediate points. While the rate on meal to Perkins was not specifically mentioned or Sacramento specified in the application as an intermediate point to which it desired to continue a higher rate on meal than it concurrently maintained to Perkins, the terms of the application were general and the illustrations therein set out were merely typical of the general adjustments of rates from San Francisco to points on the Placerville branch as to which it sought authority to disregard the long and short haul rule. Thus the application provided that the illustrations therein set out

> "outlines in a general way the adjustment of rates covered by tariff C. R. C. No. 113 and is in the nature of an explanation of the general features where rates do not conform to section 21, article XII of the Constitution of California as amended October 10, 1911";

also that

> "there are instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance but it is not practicable to state them all in detail in this petition and it is the desire of your petitioner to continue such rates in force as in said tariff provided reference hereby being made to said tariff for further details and particulars as to said rates."

In view of the terms of the application it is my opinion that it should be construed as a general application for relief from the long and short haul provision of the Constitution as to *all* rates in defend-

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ant's so-called Placerville Commodity Tariff C. R. C. No. 116, and which included the less-than-carload rate on meal from San Francisco to Perkins.

In defense of this adjustment, the Southern Pacific Company, in the long and short haul investigation, contended that the rates from San Francisco to points on the Placerville branch were made lower than the rates to intermediate points because of the competition of carriers by water operating between San Francisco and Sacramento. In the case at bar, the same justification was offered and it was also said that the competition of boat lines between San Francisco and Sacramento, and of teams thence to points on the Placerville branch, forced the defendant to maintain to these points lower rates than to intermediate points. While there might have been sufficient reason on these grounds for the non-observance of the long and short haul rule as to rates from San Francisco to intermediate points south of Sacramento not located on navigable waters, it is obvious that such a reason would not justify a higher rate from San Francisco to Sacramento than from San Francisco to Perkins or other points on the Placerville branch, as the competition of the carriers by water, if there was any, was between San Francisco and Sacramento, and it was that very competition which was reflected to the points on the Placerville branch that induced the carrier to establish to those points lower rates than it would have established had it not existed. This being so, there appears no reason why the rail rates from San Francisco to Sacramento should not have been as low, if not lower, than the rail rates from San Francisco to Perkins, and in my opinion, the conclusion that Sacramento was discriminated against by the adjustment is unavoidable. Nor is it seriously contended by the defendant that the maintenance of lower rates from San Francisco to points on the Placerville branch than to Sacramento was justified by the dissimilarity of the transportation conditions at the more distant points, and Mr. Butler, assistant general freight agent of defendant, stated at the hearing (see transcript, page 19) that he did not defend the Placerville tariff and the fact that defendant, on April 12, 1914, canceled the non-intermediate application of the rate to Perkins shows that defendant agrees with the Commission in this view.

As to team competition from Sacramento to points on the Placerville branch, which probably did exist at one time, owing to the fact that teams came into Sacramento loaded and would be willing to take a load back, it was not seriously urged that such competition now exists, and even if there were such competition today, it would seem to justify a lower rate from Sacramento to Perkins on shipments originating at Sacramento as well as on shipments originating at San Francisco.

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The complainant made no showing that the rates charged were unreasonable *per se* or discriminatory in any other respect than that they were violative of the long and short haul rule.

There is no doubt in my mind that such rates violated the long and short haul rule and were discriminatory under that rule.

The Commission's order of October 26, 1911, in the long and short haul proceeding (Case 214) issued under authority of section 21, article XII of the Constitution as amended on October 10, 1911, and in pursuance to which the defendant's application was filed, directed the carriers to remove all violations of the long and short haul provisions then existing or in the event it was desired to justify the same or any of such violations, to file applications specifying the particular violations they desired to continue. By this order the carriers were impliedly granted permission, for practical reasons, to maintain the *status quo* until the Commission passed upon such application. By a subsequent order issued on November 20, 1912, in the same proceeding, express permission so to do was given. The Commission did not, however, by these orders sanction or approve any of the rates covered by the defendant's application which were in violation of the long and short haul provision. In fact, it expressly withheld its approval of such rates. Therefore, in my opinion, the filing of the application for relief from the long and short haul provision and the permission of the Commission to maintain the *status quo* did not operate to extend to the carrier immunity from reparation during the pendency of said application if the higher rates charged to the intermediate points were thereafter found to be unreasonable or discriminatory and if, in the Commission's opinion, reparation was due. In this respect the rates covered by the application were no different from rates filed in tariffs and which are subject to complaint and the Commission's power to award reparation.

On April 12, 1914, the defendant made the rate to Perkins applicable to all intermediate points and thereby presumptively established that rate as a just and reasonable rate to Sacramento. This resulted in a discontinuance of the deviation from the long and short haul rule and removed the discrimination theretofore appearing in the rates complained of. The question for the Commission to decide is, shall the defendant be required to pay reparation in this case?

I have no hesitation in declaring my conviction that reparation should be awarded where complainants can show that the application of rates, violative of the long and short haul rule, has resulted in damage to complainants. I do not believe that the carriers should be required to pay reparation to a complainant who has not been damaged when it is evident that such reparation can not be passed on to those who are

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entitled to it, but rather, that complainant will keep it as additional profit.

There may be instances where complainants will be able to show that their selling prices, in cases of this kind, were not based upon cost and carriage, but were directly affected by competition from points enjoying rates violative of the long and short haul rule. In such cases it may be possible to show damage and that reparation should be awarded. In the case at bar no testimony was offered to show that the rate from San Francisco to Perkins, discriminatory as it clearly was when compared with the rate from San Francisco to Sacramento, and violating the long and short haul rule as it did, had any effect upon the price made by complainant in selling his merchandise to customers in Perkins, and it is therefore fair to assume that complainant based his selling price upon cost and carriage and made his profit, in which event reparation, if due to any one, is due to the people to whom complainant sold his wares and they, in turn, in equity should pass it on to those to whom they sold the merchandise. Such is, of course, impossible, and the state is put to the expense of putting the machinery of this Commission in motion to collect petty reparation from the carriers who are not entitled to retain it, or see that it is paid to shippers as clearly not entitled to it, often under circumstances which indicate that such claims for reparation would never have been filed had it not been for the activities of claim agents who usually receive 50 per cent of the amount recovered, while the consumer, to whom the reparation is due in the last analysis, gets nothing. I do not believe that such was the aim or intent of the law. Undue discrimination must be removed wherever and whenever found; deviation from the long and short haul rule must be justified or discontinued; reparation should be awarded where damage is shown, but I do not believe the time of this Commission should be occupied to the neglect of more important matters in helping to collect reparation for people not entitled to it.

The criticism as to the manner in which such claims are some times brought does not apply to this case, which was instituted by Mr. Bradley who is regularly employed by the members of a large and important association to look after their interests, and if complainant in this case can show that his selling price was not based upon cost and freight, and that he was damaged, he should be permitted to do so, and reparation awarded for damages shown.

The conclusions herein reached are in accord with the opinion of the Interstate Commerce Commission in *Appalachia Lumber Co.* vs. *L. & N. R. R. Co.,* 25 I. C. C. 193. In that case the Commission said:

> "It would be inconsistent to grant reparation for a disregard of the rule of the fourth section during that period within which the

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law making authority had expressly sanctioned existence of such disregard."

And that:

"No damages can be given up to the time when the Commission passes upon these fourth section applications unless possibly a case is made out under the third section which carries with it an award of damages or unless under the first section the rate to the intermediate point has been found unreasonable."

The facts in that case, however, and the provisions in section 4 of the Interstate Commerce Act are essentially different from the facts in this case and the provisions of the Public Utilities Act applicable in this proceeding. It does not appear that the defendant in the Appalachia case, subsequent to the filing of its application for relief from the fourth section of the Interstate Commerce Act, removed the discrimination against the intermediate points by establishing the rate to the more distant point as a maximum to the intermediate point and thereby admitted the reasonableness of that rate for the shorter haul.

This case, like all others heard and decided by the Commission, must rest upon the peculiar statement of facts applicable to it and under all the circumstances of the case I find that the application for an award of reparation must be denied.

I submit the following form of order:

ORDER.

This case being at issue upon complaint and answer duly filed, and a public hearing having been held, and the matters and things involved in the case thoroughly considered, and the Commission having found that the rate herein complained of was discriminatory and violative of the long and short haul rule, but that such discrimination has been removed, and such deviation from the long and short haul rule discontinued, and that under the circumstances of the case the application for an award of reparation should be denied,

It is hereby ordered that such application for an award of reparation be, and it is hereby, ordered, and the case dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 22d day of July, 1915.

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DECISION No. 2621.

IN THE MATTER OF THE APPLICATION OF GEORGE F. DETRICK, H. W. FURLONG AND PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING GEORGE F. DETRICK AND H. W. FURLONG TO SELL AND TRANSFER UNTO THE PACIFIC GAS AND ELECTRIC COMPANY AND AUTHORIZING THE PACIFIC GAS AND ELECTRIC COMPANY TO PURCHASE AND ACQUIRE FROM THEM ALL OF THE SHARES OF THE CAPITAL STOCK OF WEST SACRAMENTO ELECTRIC.

Application No. 1783.

Decided July 23, 1915.

George F. Detrick and H. W. Furlong, having through various agreements and transfers, title to the stock of the West Sacramento Electric, an electrical corporation serving the town of Broderick and adjacent territory, apply jointly with the Pacific Gas and Electric Company to transfer such stock to the latter company for a consideration of $30,000.00, such sum to be invested in preferred stock of the Pacific company at 82½. Application granted.

L. H. Susman, for Pacific Gas and Electric Company.

T. T. C. Gregory, for George F. Detrick and H. W. Furlong.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application, whereby Pacific Gas and Electric Company seeks permission to purchase the capital stock of West Sacramento Electric.

West Sacramento Electric was organized on September 5, 1911, to construct and operate an electrical distributing system in Broderick and territory adjacent thereto, in Yolo County, California.

West Sacramento Electric was organized by E. R. Lilienthal and associates. The company has an authorized capital stock issue of $100,000.00 divided into 1,000 shares of the par value of $100.00 each. All of the stock is outstanding. During the early part of 1914 the organizers of West Sacramento Electric sold their stock to H. W. Furlong for the sum of $40,000.00. In payment, H. W. Furlong gave three promissory notes, secured by the stock of West Sacramento Electric. When the notes became due, H. W. Furlong refused to pay them. He alleged that E. R. Lilienthal and his associates had not complied with certain agreements and that because of such non-compliance he suffered damages in excess of the face value of the notes. Thereafter he brought an action in the Superior Court of the city and county of San Francisco to enjoin E. R. Lilienthal and his associates

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from foreclosing on the pledged stock. E. R. Lilienthal and his associates have assigned their interests to George F. Detrick.

Both George F. Detrick and H. W. Furlong have agreed to sell and transfer any and all interests they may have in the stock of West Sacramento Electric to Pacific Gas and Electric Company for the sum of $30,000.00 in cash. The sum of $27,000.00 is to be paid to George F. Detrick and $3,000.00 to H. W. Furlong. Both have agreed to use the cash payments to purchase first preferred stock of Pacific Gas and Electric Company at $82.50 per share.

Both H. W. Furlong and George F. Detrick have agreed in case the Commission grant this application to cause the pending litigation to be dismissed. The notes, given by H. W. Furlong in payment for the stock of West Sacramento Electric, are to be canceled.

In Exhibit No. 1 applicants report the value of the physical property of West Sacramento Electric, as follows:

Filed July 19, 1915.

Summary of Inventory of West Sacramento Electric Company Properties as of April 30, 1915.

Distribution system at Broderick	$6,458 00
Line and equipment from Broderick station to River Bank and distribution	4,663 00
Main 10 K. V. line from Bay Line No. 3 to Elkhorn	15,208 00
Line and equipment on main 10 K. V. line from Broderick sub to No. 785 tap	3,773 00
Eleven K. V. tap from Bay No. 3 to Reclamation District No. 785	1,019 00
Distribution system at headquarters	1,461 00
Eleven K. V. tap line from District No. 900 to suction dredge	764 00
District No. 900 11 K. V. line and taps	5,933 00
Sixty K. V. line from Bay No. 3 to District No. 900	10,913 33
Eleven K. V. line and service from District No. 900 to electric dredge (carried under the 60 K. V. line)	955 00
Broderick storerooms (material and supplies and tools) and 11 K. V. laboratory taps	3,545 06
Total	$54,692 39

The testimony in this proceeding shows that West Sacramento Electric has a total indebtedness amounting to $28,435.21. All but $3,400.00 of its indebtedness is due to Pacific Gas and Electric Company. The indebtedness due Pacific Gas and Electric Company represents the cost of lines purchased from Pacific Gas and Electric Company, the cost of making repairs and the cost of electrical energy. The current assets of West Sacramento Electric are reported at $4,700.00. By acquiring the stock of West Sacramento Electric, the Pacific Gas and Electric Company becomes liable for its indebtedness.

Witness for Pacific Gas and Electric Company testified that the distributing system of West Sacramento Electric can readily be absorbed into the system of Pacific Gas and Electric Company. It is the inten-

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tion of the Pacific Gas and Electric Company to make the necessary adjustments as soon as possible.

West Sacramento Electric has reported earnings and expenses for the year ended December 31, 1914, as follows:

Operating revenues	$22,398 97
Operating expenses	17,385 34
Net operating revenues	$5,013 63

The report shows no deductions because of interest payments.

I herewith submit the following form of order:

ORDER.

George F. Detrick, H. W. Furlong and Pacific Gas and Electric Company having applied to this Commission for an order authorizing Pacific Gas and Electric Company to acquire from George F. Detrick and H. W. Furlong all the capital stock of West Sacramento Electric, for the sum of $30,000.00 in accordance with the agreements marked Exhibits A and B, attached to this application; and a public hearing having been held and the Commission being fully apprised in the premises, and it appearing that it is to the public interest to authorize the transfer of the stock as prayed for,

It is hereby ordered that Pacific Gas and Electric Company be given authority, and hereby is given authority, to acquire the capital stock of West Sacramento Electric now owned by George F. Detrick and H. W. Furlong, in accordance with agreements marked Exhibits A and B attached to this application.

The authority herein given is given upon the following conditions and not otherwise:

1. The values referred to in the foregoing opinion or the purchase price of the stock shall not be binding upon this Commission or any other rate fixing body for rate fixing purposes or otherwise.

2. Applicant shall report to this Commission within ten days after the purchase of the stock the date of purchase and transfer.

3. This order shall apply only to such stock as shall be acquired on or before October 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

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DECISION NO. 2622.

PINNEY & BOYLE MANUFACTURING COMPANY

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, COAST LINES SOUTHERN PACIFIC COMPANY, AND SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 599.

Decided July 23, 1915.

Complainant attacks the present classification on air-tight heating stoves, sheet metal stoves, etc., and petitions the Commission to either reduce the classification or establish a commodity rate on these items from Los Angeles to various points within the State of California.

Held, That the present rates on air-tight heaters in mixed or straight carloads are unreasonable in so far as they exceed the fifth class with a minimum of 20,000 pounds from Los Angeles to Santa Barbara, San Luis Obispo, Fresno, Bakersfield, Stockton, Oakland, San Francisco, Sacramento, San Bernardino, and San Diego, to which points schedule established to become effective on and after August 30, 1915.

F. P. Gregson, for Complainant.

Geo. D. Squires, for Southern Pacific Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This proceeding is the outgrowth of Case No. 504, decided March 13, 1914, 4 C. R. C. 404, *Pinney & Boyle Manufacturing Company* vs. *The Atchison, Topeka and Santa Fe Railway Company*, which by consent is made part of the records of this case. In the case cited it was alleged that the charges exacted for the transportation of a carload of air-tight sheet-iron heaters from Los Angeles to Oakland were not in accordance with classification and rating applicable, and reparation was sought. The Commission found that the commodity had been properly classified and rated, and therefore dismissed the complaint.

In the instant case the complainant, a manufacturer of sheet-iron air-tight heating stoves, with and without cast-iron tops, sheet-iron camp stoves, also ovens, assails, as unjust and unreasonable, Item 21, page 251 of Western Classification No. 52, C. R. C. No. 84, F. W. Gomph, agent. The item reads:

Air-tight heaters, sheet-iron, not otherwise indexed by name:	
In boxes or crates, L. C. L.	1st class
In boxes or crates, C. L. C., minimum weight 12,000 pounds, subject to Rule 6-B	3d class

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Rule 6-B, referred to, reads:

"Section 1. Minimum weight provided in the classification will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky articles * * * whether loaded in box cars or on open cars.

Section 2. Upon such light and bulky articles the standard car will be 36 feet in length, inside measurement, 3 per cent per foot to be added for each foot in excess of 36 feet, and 3 per cent per foot to be deducted for each foot less than 36 feet, with a mimimum of 91 per cent, all percentages to be based on inside dimensions. In applying premium and deduction charges, fractions of a foot, six inches or less, to be disregarded."

Complaint was filed May 12, 1914, and subsequent to this date and prior to date of hearing at Los Angeles, June 11, 1915, the above classification was canceled by Western Classification No. 53, C. R. C. 112, F. W. Gomph, agent. The reading in this publication, Item 22, page 306, is identical to that shown in Classification No. 52.

The Commission is asked to fix descriptions and ratings, either by exception to the classification, as follows:

Air-tight heaters, sheet-iron, with or without cast-iron tops and base, in packages, L. C. L. ..... 3d class

Air-tight heaters, sheet iron, with or without cast-iron tops and base, in packages or loose, C. L., minimum weight 20,000 pounds..... 5th class

Or by establishing commodity rates from Los Angeles to certain points within the State of California served by the defendant carriers. The suggested changes would permit air-tight sheet-iron heaters, without cast-iron tops and base, hereinafter referred to as air-tight heaters, to move in less than carload quantities, in packages, at third class, and in carloads, in packages or loose, at fifth class, minimum weight 20,000 pounds, and thus remove the box or crate requirement, eliminating Rule 6-B, and the weight restriction, Rule 21-B, when in mixed carloads with other articles authorized in note following Item 21, page 306 of Western Classification No. 53, which reads:

"Air-tight heaters, sheet iron * * * may be loaded in mixed carloads, subject to Rule 21-B, with stoves, stove furniture, furnaces, and parts of, shown in bracketed items thereunder * * * ."

Rule 21-B reads:

"Carload ratings shown in classification for articles subject to Rule 21-B, will not apply on straight carloads of the articles named. In such cases the amount of the articles so designated, which may be included, shall not exceed 33⅓ per cent of the total weight loaded in the mixed carload * * * ."

The bracketed articles are found under the caption: *Stoves, Stove Furniture, Furnaces, and Parts of*, Item 20, page 305, to and including Item 21, page 306, are quite numerous and include:

Air-tight heaters, sheet iron, with cast-iron tops, and trimmings, or with cast-iron lining, in packages or loose; camp, sheet iron or steel, set up, loose; ovens and cabinets for gas, oil and alcohol stoves in separate packages.

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All of which are rated fifth class, minimum weight 20,000 pounds, in straight or mixed carloads.

Complainant's witness testified that his firm shipped air-tight heaters, with and without cast-iron trimmings, and that those made entirely of sheet iron are inexpensive (their value being about half that of air-tight sheet-iron heaters, with cast-iron tops, trimmings or linings), are about the same value as sheet-iron camp stoves or ovens, may be transported safely in packages or loose as are the other articles, and will load as heavily as sheet-iron camp stoves; he, therefore, contends that the air-tight heaters of his firm's manufacture should be classified and rated no higher than air-tight sheet-iron heaters, with cast-iron tops and trimmings or with cast-iron linings, and should be accorded the same treatment when shipped in mixed carloads with the bracketed items specified above, shown in Western Classification on pages 305 and 306, particularly, with sheet-iron camp stoves and ovens; further, that eastern manufacturers, strong competitors, are permitted to forward the various commodities in straight or mixed carloads to California terminals and intermediate points, under Item 936, page 178, Transcontinental Freight Bureau West Bound Tariff No. 1-N, I. C. C. 996, R. G. Countiss, agent. The commodity grouping reads:

> "Stoves, coal or wood-burning only, viz: Stoves, heating, air-tight, sheet iron with or without cast-iron tops and bases; portable bake ovens; sheet iron drums (for heating); also including stoves (cast iron), cooking, heating (including stoves with cast-iron tops, bottoms and linings or cast iron or steel ranges (including coal or wood-burning stoves or ranges with gas combinations, or attachments), farmers' combination stoves with caldrons for same, and extra cast-iron parts of the above mentioned articles, minimum weight 20,000 pounds."

This obviously gives interstate shippers undue advantages in that they are privileged to ship to California points air-tight heaters, in packages or loose, straight or mixed carloads, minimum weight 20,000 pounds, while a California intrastate shipper must box or crate air-tight heaters and may not load them in mixed carloads in excess of 33⅓ per cent of the total weight in the car.

Southern Pacific Company's witness, in support of his testimony, introduced an exhibit showing that it is physically impossible to load 20,000 pounds of air-tight heaters into a 36-foot, 40-foot, or 50-foot car. This was admitted by complainant's witness, who also testified that it is impossible to load a like weight of sheet-iron camp stoves into similar sized cars. This being true, it appears inconsistent to rate the latter in carloads at fifth class, minimum weight 20,000 pounds and not the former.

Another exhibit was presented by the Southern Pacific Company, purporting to show that air-tight heaters are properly classified and rated. This exhibit consisted of copies of letters from various eastern manu-

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facturers and shippers addressed to the Uniform Classification Committee, Chicago, Ill. These communications, presumably, are replies to an inquiry as to the advisability of changing the minimum carload weight and rate from 20,000 pounds, fifth class, to 12,000 pounds, subject to Rule 6-B, third class. Excerpts from one of the letters follow:

> "You will note that where heating stoves only were shipped we usually secured the minimum weight; where heating stoves and air-tights were mixed or air-tights only were shipped we often did not secure anything near like the full minimum carload weight."
>
> "* * * owing to the difficulty we have had in getting minimum weight in small cars we have lost considerable trade, * * * ."
>
> "* * * we fully believe that if we were allowed the use of any size cars for shipments of mixed heating stoves and air-tights that we could double this year's business. The class of air-tights which we have trouble in shipping are the cheapest grades on which there is very little profit for the manufacturer and the slight difference in freight charges on this class of goods makes it very difficult for the northern manufacturer to sell in southern markets."

This letter, being indicative of the others, tends to show that more or less objection was raised to the contemplated change and, as a measure of compromise, it would appear that the present classification was formulated; it is therefore contended that this adjustment should not be disturbed. I am heartily in accord with this contention, providing no discrimination results, and, further, provided that local conditions do not justify the change. A good and sufficient reason must have been advanced to induce the carriers, parties to Transcontinental West Bound Tariff No. 1-N, I. C. C. 996, to make an exception of air-tight heaters, as well as the other commodities, by taking them out of the Western Classification and grouping the articles as is shown above. It is well established that a classification should apply universally in the territory which it purports to cover and exceptions thereto should be made only for exceptional reasons. Uniformity of classification is to be commended, but it does not follow that this result should be obtained by accepting as a standard a classification which, when applied to a given commodity, or territory, becomes unreasonable. To my mind, it is not only unreasonable, but discriminatory, to classify and rate the commodity herein considered in straight carloads at third class rate, 12,000 pounds, minimum, subject to Rule 6-B, and when mixed with the other articles enumerated, restrict the weight of the air-tight heaters to 33⅓ per cent of the total weight loaded into the car, while transcontinental movements are free of such qualification or restriction; this particularly applies when the eastern product competes with the local.

The fact that defendants failed to justify a different classification and rating for straight or mixed carloads of sheet-iron air-tight heaters, N. O. I. B. N., than for sheet-iron air-tight heaters, with or without

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cast-iron tops and trimmings, or with cast-iron linings in mixed carloads, and the further fact that air-tight heaters and ovens are mixed with air-tight sheet-iron heaters, with cast-iron tops, trimmings, or linings, in carloads, minimum weight 20,000 pounds, in packages or loose, from eastern defined territory to California points, warrants the conclusion that the application, in the interest of mixed carload shipments, should be granted.

Upon full consideration of the question raised by this complaint, I am of the opinion and find that the present classification of air-tight heaters, in mixed or straight carloads, by defendants is unjust and unreasonable in so far as it exceeds fifth class, with a minimum of 20,000 pounds, to Santa Barbara, San Luis Obispo, Fresno, Bakersfield, Stockton, Oakland, San Francisco, Sacramento, San Bernardino, and San Diego. I recommend that commodity rates be published to the points named. Would also recommend that carriers, in publishing commodity rates as specified in the order, authorize the mixing in carload lots of air-tight sheet-iron heaters with the items shown in current Western Classification No. 53, C. R. C. 112, on pages 305 and 306, under the heading of Stoves, Stove Furniture, Furnaces and Parts of. With respect to the classification above specified for less-than-carload lots, I am of the opinion that the evidence introduced at the hearing does not justify a change and that present classification and rates should be maintained.

I submit herewith the following form of order:

ORDER.

The complaint and answer having been filed in the above entitled proceeding, and a public hearing having been held thereon, and a full investigation of the matters and things involved having been had, and the Commission having made the findings of fact which are contained in the opinion which precedes this order and on which this order is based,

It is hereby ordered that the above named defendants, The Atchison, Topeka and Santa Fe Railway Company, coast lines Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, according as their lines or routes may run, be and they are hereby notified and required to publish, file and put into effect on or before August 30, 1915, the following rates: On air-tight heaters, sheet iron, with or without cast-iron trimmings, tops or bases, in packages or loose, straight or mixed carloads, minimum weight 20,000 pounds,—from Los Angeles to Santa Barbara 21 cents, to San Luis Obispo 27½ cents, to Fresno 43 cents, to Bakersfield 36 cents, to Stockton 27½ cents, to Oakland 27½ cents, to San Francisco 27½ cents, to Sacramento 27½ cents, to San Bernardino 17 cents, and to San Diego 15 cents per hundred pounds.

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It is further ordered that, as to the other matters involved, the complaint be and it is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION NO. 2623.

IN THE MATTER OF THE APPLICATION OF WEST SACRAMENTO ELECTRIC FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS.

Application No. 1538.

Decided July 23, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

West Sacramento Electric having on July 20, 1915, made written request to this Commission that the above entitled application be dismissed,

It is hereby ordered that the above application be and the same is hereby dismissed.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION NO. 2624.

IN THE MATTER OF THE APPLICATION OF RICHMOND AND SAN RAFAEL FERRY AND TRANSPORTATION COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF TWO HUNDRED AND FORTY-FIVE SHARES OF THE CAPITAL STOCK OF SAID COMPANY.

Application No. 1755.

Decided July 23, 1915.

Applicant applies for permission to issue 245 shares of its capital stock of the par value of $100.00 per share, 195 shares to be issued to Charles A. Van Damme covering expenditures heretofore made by him, together with 50 shares in exchange for the transfer of certain leases of terminal properties in Marin and Contra Costa counties, the remaining 5 shares to company directors. Application granted, such stock to be sold at not less than par and applicants

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directed to maintain a proper depreciation fund, sufficient in five years to cover cost of wharf and terminal facilities.

James Oliver, for Richmond and San Rafael Ferry and Transportation Company.

F. P. Griffiths, for Castro Point Railway and Terminal Company.

A. S. McDonald, in propria persona.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Richmond and San Rafael Ferry and Transportation Company for authority to issue 245 shares of capital stock for the purpose of acquiring the ferry transportation line now operated by Charles Van Damme between Richmond, Contra Costa County, and San Rafael, Marin County.

Applicant was incorporated March 27, 1915, under the laws of the State of California, with an authorized capitalization of $100,000.00, divided into 1,000 shares of the par value of $100.00 per share. None of this stock has been issued, with the exception of five shares necessary to qualify directors.

At the present time authority is asked to issue 245 shares to the following parties:

Name	Number of shares
James M. Oliver	1
Andrew F. Mahony	49
Oliver J. Olson	49
Harold T. Gill	10
R. H. Clark	10
Charles Van Damme	117
Total	245

Of the above-mentioned 245 shares it is proposed to issue 195 shares at par for cash and to use the proceeds in repaying Charles Van Damme for moneys expended by him in the construction of docks, wharves, et cætera, necessary to the operation of the ferry system. The remaining 50 shares it is proposed to issue direct to Van Damme in consideration for the transfer of two leases to terminal property in Marin and Contra Costa counties; a franchise from the county of Contra Costa for the operation of a ferry line; and a five-year lease to the ferryboat "Ellen."

The lease to the terminal property in Contra Costa County was approved by this Commission in an order dated July 9, 1915. It provides for the construction of a wharf by Van Damme upon the property of the Castro Point Railway and Terminal Company, in return for which Van Damme is to have free use of the wharf for a

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period of five years, together with the use of the right of way connecting the wharf with Scofield avenue, Richmond.

It is further provided that at the end of five years the lease may be renewed for an additional five years at a fixed monthly rental, based upon the earnings of the ferry line, but not to exceed $75.00 per month.

The lease to terminal property in Marin County is in the form of an agreement dated January 12, 1915, between San Francisco Northern Railway and Charles Van Damme. It provides for a lease of approximately two acres of land at Point San Quentin, on San Francisco Bay, for a period of five years, with the option of renewal for a period of five years more. As rent therefor the lessee agrees to pay $75.00 per month for the first year; $100.00 per month for the second, third and fourth years, and $125.00 per month for the fifth year. If the term is extended for an additional five years the rental is to be at the rate of $150.00 per month.

The lease to the ferryboat Ellen is contained in an agreement between the Association of Mare Island Employees and Charles Van Damme, dated December 15, 1914. This lease is for a period of five years, and the monthly rental is fixed at $250.00 per month.

In the event of the disabling of the ferryboat Vallejo, operated by the lessors between Vallejo and Mare Island, it is provided that the association may take over and operate the ferryboat Ellen between such points until the Vallejo is again in service. During such period, however, the rent paid by the lessees for the use of the ferryboat Ellen will cease.

The franchise for the operation of the ferry line was granted by the county of Contra Costa on March 15, 1915, and is for a period of twenty years.

At the hearing of the application Van Damme testified that during the month of May, 1915, the first month in which this line was operated, approximately 1,400 automobiles and 10,000 passengers were transported. To date the company has carried no express and but little freight. The gross earnings for the first month were approximately $2,400.00, and the operating expenses approximately $1,900.00, including a portion of the cost of building the Contra Costa County wharf, which Van Damme states is being written off on a monthly basis. As applicant proposes to issue stock against the construction of this wharf, it will be necessary that an adequate depreciation fund be established, in order that the company's capital account may be unimpaired at the expiration of five years, when the right to free use of the wharf ceases.

Applicant has submitted a statement of expenditures by Van Damme in connection with the building of the wharves, et cætera, for the

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operation of the ferry, which shows expenditures in the total sum of $21,040.73, divided as follows:

Richmond pier	$9,730 73
San Quentin pier	9,704 00
Miscellaneous expenditures	1,606 00

The operation of this ferry has already proved of great convenience to automobiles and other forms of passenger traffic, forming, as it does, a new means of connection and short route between the east bay counties and Sonoma, Marin and neighboring counties on the north.

After a consideration of the evidence submitted I am of the opinion that this application should be granted, and I submit the following form of order:

ORDER.

Richmond and San Rafael Ferry and Transportation Company having applied to this Commission for authority to issue 245 shares of capital stock of the par value of $100.00 per share, for the purpose of acquiring certain properties, as hereinbefore set forth;

And it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which said stock is to be issued are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Richmond and San Rafael Ferry and Transportation Company be, and it is hereby, authorized to issue 250 shares of capital stock for the following purposes, to wit:

One hundred ninety-five shares for the purpose of repaying Charles Van Damme for expenditures made by him, as hereinbefore set forth.

Fifty shares to be issued to Charles Van Damme in exchange for the transfer of two leases to terminal property in Marin and Contra Costa counties; franchise from the county of Contra Costa dated March 15, 1915; lease to ferryboat Ellen dated December 15, 1914, as more fully described in the opinion which precedes this order.

Five shares to be issued—one share each to the company's several directors.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The stock herein authorized to be issued shall be issued at not less than its par value of $100.00 per share.

2. A depreciation fund shall be set up monthly in equal amounts against the cost of the wharf and terminal facilities in Contra Costa County, so that said fund in five years shall amount to the cost of said wharf and terminal facilities.

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3. Richmond and San Rafael Ferry and Transportation Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted shall apply only to such stock as shall have been issued on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION NO. 2625.

IN THE MATTER OF THE APPLICATION OF THE APPLETON LAND, WATER AND POWER COMPANY TO SELL PARTS OF ITS WATER RIGHTS AND SYSTEM TO THE HESPERIA WATER COMPANY.

Application No. 1693.

IN THE MATTER OF THE APPLICATION OF HESPERIA WATER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE EXERCISE OF THE RIGHT TO FURNISH WATER TO THE INHABITANTS AND LANDOWNERS IN AND ABOUT HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA, AND FOR THE RIGHT TO PURCHASE CERTAIN WATER RIGHTS AND PLANT AND TO PAY THEREFOR BY THE ISSUANCE OF PAID UP STOCK, NOTES AND MORTGAGES OF THE COMPANY.

Application No. 1694.

Decided July 23, 1915.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

This Commission, in an order dated June 30, 1915, in the above entitled applications, having authorized The Appleton Land, Water and Power Company to lease certain water utility properties in San Bernardino County to Hesperia Water Company, and having authorized the latter company to acquire said properties and operate the same

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under a certificate of public convenience and necessity; and said order having contained the following provisions, among others:

> "This certificate of public convenience and necessity shall not become effective until Hesperia Water Company shall have filed a stipulation with this Commission and shall have received the approval of the Commission thereto by supplemental order, said stipulation to recite that Hesperia Water Company does not, and never shall, claim in any proceeding before this Commission, or any other public body, a value for the franchise granted to Hesperia Water Company by Ordinance No. 164 of the county of San Bernardino, in excess of the actual cost to Hesperia Water Company of acquiring said franchise.
>
> "Before the lease herein authorized shall be finally executed, applicants shall present to this Commission satisfactory evidence that all of the consumers now served by The Appleton Land, Water and Power Company will continue to be served in the future either by Hesperia Water Company or The Appleton Land, Water and Power Company, and applicants shall secure from this Commission a supplemental order approving the same."

And The Appleton Land, Water and Power Company and Hesperia Water Company now having filed with this Commission the stipulations required in the above mentioned order,

It is hereby ordered that the stipulations filed by the applicants herein on July 19, 1915, and marked Exhibit "D" in Application No. 1693 and Exhibits "F" and "G" in Application No. 1694, be, and they are hereby, approved.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION NO. 2626.

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME TELEPHONE COMPANY FOR AUTHORITY TO ISSUE STOCK, BONDS AND NOTES.

Application No. 871.

Decided July 23, 1915.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

FOURTH SUPPLEMENTAL ORDER.

This Commission having heretofore on February 24, 1914, rendered its opinion in the above entitled matter and having subsequently issued supplemental orders in the above entitled matter;

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And the Southwestern Home Telephone Company now having requested that that portion of Application No. 871, in which it asks for authority to issue 25,000 shares of stock and for authority to sell an unspecified number of its bonds for the purpose of liquidating its indebtedness and to make extensions, be dismissed,

It is hereby ordered that said portions of said Application No. 871 be and the same are hereby dismissed.

The foregoing fourth supplemental order is hereby approved and ordered filed as the fourth supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION No. 2627.

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN HOME TELEPHONE COMPANY FOR AUTHORITY TO ISSUE STOCK, BONDS AND NOTES.

Application No. 871.

Decided July 23, 1915.

Southwestern Home Telephone Company authorized to issue and deliver to Arthur Gregory, $4,500.00 face value of its 5 per cent bonds, provided that said Gregory shall pay a note of his due the telephone company in the sum of $3.000.00 and shall surrender to the telephone company 4,500 shares of stock.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

THIRD SUPPLEMENTAL ORDER.

This Commission on February 24, 1914, having rendered its opinion in the above entitled matter, and this Commission subsequently having issued supplemental orders in the above entitled matter, and said opinion of February 24, 1914 (Decision No. 1296), having provided that the applicant herein should be given authority to issue $4,500.00 face value of its five (5) per cent bonds to Mr. Arthur Gregory to carry out the terms of an agreement entered into in 1907 when a proper showing had been made in regard to said agreement and such showing having been made,

It is hereby ordered that Southwestern Home Telephone Company be granted authority to issue to Mr. Arthur Gregory $4,500.00 face value of its 5 per cent bonds; being bonds now pledged as collateral security of said Southwestern Home Telephone Company.

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The authority herein granted is granted upon the condition that said bonds shall be issued to said Gregory only after said Gregory shall have paid to Southwestern Home Telephone Company an indebtedness of $3,000.00 represented by a note given by said Gregory to Southwestern Home Telephone Company, and shall have surrendered to said Southwestern Home Telephone Company 4,500 shares of stock of said company.

The authority herein given shall apply only to such bonds as may be issued to said Gregory on or before December 31, 1915. Within thirty days after the bonds herein authorized shall be issued to said Gregory, applicant shall make a report to this Commission stating in detail its compliance in full with the terms of this order.

The foregoing third supplemental order is hereby approved and ordered filed as the third supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

DECISION No. 2628.

IN THE MATTER OF THE APPLICATION OF CITRUS BELT GAS COMPANY TO BUY A SYSTEM OF GAS PLANTS AND TO ISSUE STOCK, BONDS AND NOTES; AND OF P. J. DUBBELL TO SELL A SYSTEM OF GAS PLANTS.

Application No. 359.

Decided July 23, 1915.

The Commission having heretofore authorized the Citrus Belt Gas Company to purchase a system of gas plants and to issue certain securities provided it should first have approved a form of deed under which it proposes to acquire title to the property, the indenture under which it assumes the payment of $200,000.00 bonds of Home Gas and Electric Company and the proposed manner of stock distribution, all of which now being filed are herein approved.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

SUPPLEMENTAL ORDER.

This Commission having heretofore issued its orders in the above entitled matter and the order of this Commission dated May 5, 1915 (Decision No. 2351), in this proceeding having provided that Citrus Belt Gas Company should be given authority to issue 2,500 shares of stock of the par value of $100.00 per share or in lieu of the issue of said stock it be granted authority to issue $200,000.00 of certificates of

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indebtedness, and Citrus Belt Gas Company in writing having expressed its desire to issue the 2,500 shares of stock;

And the order of this Commission heretofore issued on May 5, 1915 (Decision No. 2351), having provided that said stock should be issued only upon conditions therein specified;

And said order having provided that said stock should be issued only after this Commission should have issued a supplemental order approving the form of deed to be executed between P. J. Dubbell, trustee, and Citrus Belt Gas Company; the method of stock distribution proposed by Citrus Belt Gas Company; and the form of indenture under the terms of which Citrus Belt Gas Company should assume the payment of $200,000.00 face value of bonds of Home Gas and Electric Company of Redlands and make said $200,000.00 of bonds a lien upon the properties of Citrus Belt Gas Company, subject to existing mortgage indebtedness;

And Citrus Belt Gas Company having filed Exhibits No. "A-1," "B-1" and "C-1" in this proceeding, being respectively the form of deed, the form of stock distribution, and the form of indenture as hereinbefore set out;

And it appearing to this Commission that said form of deed, method of stock distribution, and said indenture are satisfactory,

It is hereby ordered that the form of deed, marked Exhibit "A-1" by which P. J. Dubbell transfers certain gas plant properties and real estate to Citrus Belt Gas Company be and the same is hereby approved.

It is further ordered that the proposed form of stock distribution by Citrus Belt Gas Company as submitted in Exhibit "B-1" as follows be and the same is hereby approved:

To—

The First National Bank of Riverside	248 40/100	shares.
The Farmers Exchange National Bank of San Bernardino	182 85/100	shares.
C. M. Grisinger	172 50/100	shares.
The Colton National Bank	127 65/100	shares.
The Riverside Savings Bank and Trust Company	103 50/100	shares.
The Merchants National Bank of San Francisco	103 50/100	shares.
The San Bernardino National Bank	103 50/100	shares.
The Citizens Bank of Corona	79 35/100	shares.
The All Night and Day Bank of Los Angeles	75 90/100	shares.
H. B. Duncan	69	shares.
The First National Bank of Redlands	69	shares.
The First National Bank of Los Angeles	69	shares.
F. B. Hathaway	55 20/100	shares.
C. D. Brennerman	41 40/100	shares.
Estate of Geo. Brown	34 50/100	shares.
Peter Provensal	34 50/100	shares.
Brennerman Estate	34 50/100	shares.
The First National Bank of Colton	34 50/100	shares.
W. H. Miller	33 95/100	shares.
E. A. McGillivray	27 60/100	shares.

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F. R. Kellogg & Company	24 96/100	shares.
Colton Hardware Company	22 55/100	shares.
W. A. Manson	20 71/100	shares.
C. L. Allison	20 70/100	shares.
W. C. Barth	20 70/100	shares.
The First National Bank of Corona	17 25/100	shares.
Snidecor and Mueller	17 25/100	shares.
L. C. Newcomer	17 25/100	shares.
Mary S. Duke	17 25/100	shares.
Murphy Oil Company	17 8/100	shares.
Platt Sisters	13 80/100	shares.
C. E. Vahey	13 80/100	shares.
W. H. Swan and R. C. Harbison	10 95/100	shares.
A. A. Caldwell	10 35/100	shares.
H. R. Boynton Company	6 90/100	shares.
Mary S. Sargent	6 90/100	shares.
D. H. Kathan	6 90/100	shares.
A. G. Hubbard	3 45/100	shares.
The Citizens National Bank of Redlands	3 45/100	shares.
Smith-Booth-Usher Company	3 14/100	shares.
American Stove Company	3 6/100	shares.
W. F. Boardman Company	2 17/100	shares.
Chas. F. Stamps, Jr.	1 74/100	shares.
Home Gas and Lighting Company of San Bernardino	514 5/100	shares.
Treasury Citrus Belt Gas Company	3 34/100	shares.
Total	2,500	shares.

It is further ordered that the form of indenture marked Exhibit "C-1" under the terms of which Citrus Belt Gas Company assumes the payment of not to exceed $200,000.00 of bonds of Home Gas and Electric Company and secures said bonds of Home Gas and Electric Company by a lien upon the properties of Citrus Belt Gas Company, subject, however, to existing mortgage indebtedness, be and the same is hereby approved.

It is further found as a fact that Citrus Belt Gas Company has complied with the requirements set out in the order of this Commission of May 5, 1915 (Decision No. 2351), prerequisite to the transfer of property therein authorized and the issue of stock therein authorized.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

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DECISION NO. 2629.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY TO SELL ITS ELECTRICAL DISTRIBUTING SYSTEM AND PLANT TO MT. WHITNEY POWER AND ELECTRIC COMPANY AND OF MT. WHITNEY POWER AND ELECTRIC COMPANY TO PURCHASE SAID PROPERTY.

Application No. 1756.

Decided July 23, 1915.

Tulare County Power Company, serving electrical energy for light and power purposes in the county of Tulare, was originally organized by certain dissatisfied consumers of the Mt. Whitney Power and Electric Company, but being at present in a very poor financial condition and being unable to obtain necessary funds to meet pressing indebtedness and also facing an annual deficit, it applies for permission to transfer its system to the Mt. Whitney company for a consideration of $550,000.00 to be paid, $500,000.00 in cash upon transfer of the properties, the payment by the Mt. Whitney company of notes of the Tulare company aggregating $48,029.12 and certain additional sums at later periods to a total of $350,000.00, Mt. Whitney company to assume $200,000.00 face value of notes of Tulare company due J. C. Wrightsman, which latter company shall retain all bills, accounts and notes receivable at the time of transfer.

Held, Application granted, provided that none of Tulare company's franchises shall be transferred until Mt. Whitney company shall have designated which, if any, it proposes to operate under and also that no value shall be claimed therefor other than the actual cost of same to the Tulare company.

Farnsworth & McClure, for Mt. Whitney Power and Electric Company.

E. I. Feemster and *C. E. Bush*, for Tulare County Power Company.

W. H. Orrick, for Trustees for Creditors of Tulare County Power Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application of Tulare County Power Company for authority to sell its electrical distributing system and plant to Mt. Whitney Power and Electric Company, and of the latter company to purchase the same for the sum of $550,000.00 payable as hereinafter set forth.

Tulare County Power Company was organized under the laws of the State of California on June 10, 1910, to furnish electricity for the purposes of power and lighting in Tulare County.

Thereafter, on June 13, 1912, it applied to this Commission for certificates of public convenience and necessity to operate in said county and the cities of Tulare, Lindsay and Exeter. This application was opposed by Mt. Whitney Power and Electric Company, which claimed that it was already adequately serving the territory, that the Tulare company's project was impracticable, and that it was impossible

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for the Tulare company to fulfill the promises which it was making to consumers.

Briefly stated, the plan of the Tulare County Power Company was to furnish power to its stockholders at the estimated cost price of $36.00 per horsepower per annum, and to other consumers at $50.00 per horsepower per annum, the rate then being charged in this territory by the Mt. Whitney company.

In passing upon this application the Commission stated that it would be disposed to deny the application of the Tulare County Power Company were it not for the fact that it had begun actual construction work and was pursuing such work in good faith under franchises granted previous to the effective date of the Public Utilities Act, section 50 (*b*) of the act providing:

> "That when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence, in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege."

The Tulare County Power Company was originally incorporated with an authorized capitalization of $1,000,000.00 divided into 10,000 shares of the par value of $100.00 each, of which 2,500 were 7 per cent cumulative preferred and 7,500 were common.

To put into effect its plan of furnishing power to its stockholders at cost, the company amended its original articles of incorporation so that 5,500 shares of common stock were set aside and designated "consumers common stock," and the owner and holder of each share of such stock was thereby entitled to the privilege of receiving one horsepower of electric energy at the actual cost of production. This actual cost rate was first fixed at $36.00 per horsepower but was later raised to $42.00 per horsepower. This special stockholders' rate has since been eliminated entirely from the company's tariffs, upon recommendation of this Commission, so that all the consumers, whether stockholders or not, are now paying the same rates.

Very shortly after its inception the Tulare company was beset with financial difficulties, due largely to its failure to provide for an adequate measure of long-term financing. The company also encountered difficulties in connection with a power contract with the San Joaquin Light and Power Corporation, by which it agreed to take a minimum of 1,000 horsepower throughout the year at $40.00 per horsepower per annum.

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After several ineffectual attempts to finance its properties, applicant arranged with Mr. C. J. Wrightsman, of Oklahoma, for a loan of $250,000.00 by paying an extremely onerous interest rate. This indebtedness was represented by twenty-two notes, payable to C. J. Wrightsman as follows:

1 note for $25,000 due February 1, 1914.
1 note for 25,000 due August 1, 1914.
20 notes for 10,000 due February 1, 1915.

These notes were secured by a deed of trust covering the properties of the Tulare County Power Company. In addition a number of the stockholders of the company have given bonds, with their land holdings as security, to further secure the payment of this indebtedness. Under the terms of these agreements the notes bear interest at 12 per cent per annum after maturity. At the present time the 20 notes for $10,000.00 each are still unpaid.

For the calendar year 1914 the Tulare company's gross revenue was $143,021.99 and the net revenue, after payment of operating expenses, $17,204.81. After the payment of interest the company showed a deficit for the year of approximately $20,000.00.

The Tulare Company submitted a statement of assets and liabilities as of May 31, 1915, as follows:

Assets.

Property	$775,283 63	
Material and supplies	5,998 10	
Assessments paid on company stock	14,817 85	
Unamortized discount on securities	19,725 02	
Uncompleted work orders	113 45	
Cash and deposits	895 93	
Accounts receivable	34,502 48	
Notes receivable	13,734 24	
Accrued suspense accounts	5,009 06	
Deficit	64,457 55	
		$934,537 31

Liabilities.

Preferred stock issued	$202,519 00	
Consumers stock issued	141,200 00	
Common stock issued	5,275 00	
Preferred stock issued but owned by company	7,300 00	
Consumers stock issued but owned by company	22,400 00	
Common stock issued but owned by company	194,729 00	
Payments on stock not issued	11,949 35	
Prepaid power	945 15	
Escrow account stock	26,761 74	
Depreciation reserve	11,060 00	
Assessments	40,986 90	
Notes payable	249,339 14	
Accounts payable	8,604 54	
Pay rolls payable	1,740 41	
Taxes payable	6,728 22	
Interest accrued	3,002 85	
		$934,537 31

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Mt. Whitney Power and Electric Company operates in Tulare County and a portion of Kern County. It serves the cities of Visalia, Tulare, Porterville, Lindsay, Exeter, and surrounding territory with light and power. Its lines parallel approximately 70 per cent of the lines of the Tulare company.

In asking for authority to take over the properties of the Tulare company the Mt. Whitney company represents that it is abundantly able to take care of the consumers of the former company. At the present time it has excess power through the medium of a steam plant, and it is planning to construct a new hydroelectric plant, which will still further increase its available supply.

Mt. Whitney Power and Electric Company has an authorized issue of $5,000,000.00 of first mortgage 6 per cent sinking fund thirty-year gold bonds, dated October 1, 1909, and due October 1, 1939. Of these bonds approximately $2,623,000.00 are outstanding.

Witness for the company stated that it has practically no floating debt and that its net earnings to date applicable to bond interest are more than double the amount necessary to pay interest on the present outstanding bonds, and the $440,000.00 additional bonds which it proposes to issue in case the transfer of the properties is approved.

Negotiations for the purchase of the properties of the Tulare company by the Mt. Whitney company were begun in the latter part of March, 1915. After some weeks of negotiation a proposition to sell the properties for the sum of $550,000.00 was submitted to the stockholders of the Tulare company, which proposition was defeated. However, those stockholders who were anxious to sell immediately began another campaign and at the annual meeting, on June 16, 1915, the proposition was again presented. At this meeting 3,221 shares out of a total of 3,450 shares, were represented, and the proposition was unanimously adopted.

The contract under which it is proposed to transfer the properties is dated June 30, 1915. It provides that on August 2, 1915, the Mt. Whitney company will pay the Tulare company $50,000.00 in gold coin. On that date Mt. Whitney company also agrees to pay, or have released,

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the following notes due by Tulare County Power Company, all of which have matured:

Payee	Date	Term	Interest	Interest payable	Principal
First National Bank of San Francisco	Nov. 15, '13	6 months	6%	Quarterly	$8,000 00
Thomas C. Job	Sept. 22, '13	1 year	7%	Semiannually	17,927 40
Thomas C. Job	Sept. 22, '13	1 year	7%	Semiannually	666 66
Allis-Chalmers Co.	Oct. 10, '13	1 year	7%	Annually	3,513 63
Allis-Chalmers Co.	Oct. 10, '13	1 year	7%	Semiannually	4,116 67
James M. Hunt	Sept. 22, '13	1 year	7%	Semiannually	10,800 00
Westinghouse Electric Mfg. Co.	Sept. 20, '13	8 months	6%	At maturity	1,211 25
Lindsay Nat'l Bank			8%		1,000 00
A. M. Drew					793 51
Total					$48,029 12

These notes are endorsed by various stockholders of the Tulare company and the agreement provides that if any of the notes have been paid by their endorsers the money shall be repaid to such endorsers by the Mt. Whitney company.

On or before November 1, 1915, the Mt. Whitney company further agrees to pay the sum of $25,000.00; on or before February 1, 1916, the sum of $75,000.00; on or before May 1, 1916, the sum of $50,000.00; and on or before August 1, 1916, the difference between $350,000.00 and the total sum of the foregoing payments, including all unpaid interest to August 2, 1915, on the $200,000.00 owing to C. J. Wrightsman. The deferred payments on the purchase price are to bear interest at 6 per cent per annum, payable semiannually, and are to be evidenced by four promissory notes dated August 2, 1915. These notes are to be secured by pledge of an equal amount of first mortgage bonds of the Mt. Whitney company.

In addition to the payment of $350,000.00, as above provided, Mt. Whitney Power and Electric Company agrees to assume, on August 2, 1915, the unpaid balance on the indebtedness due C. J. Wrightsman, amounting to $200,000.00, making a total consideration for the property of $550,000.00.

Mt. Whitney company also assumes all existing power contracts and agrees to assume one-half of the taxes for 1915. The Tulare company is to retain as of date of transfer cash on hand, bills and accounts receivable, and notes receivable.

Tulare County Power Company represents that the cost to date of its physical properties is the sum of $475,283.63. In addition it claims to have expended the sum of $119,395.03 in developing its business and to have issued 2,000 shares of common stock and 1,000 shares of preferred stock in securing certain water rights.

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On June 30, 1915, it had 1,053 consumers and its connected load amounted to 4,665 horsepower. Without any further increase in its business Mr. Holley, secretary and director of the Tulare company, estimated that its gross operating revenue for the next twelve months would amount to $181,285.00 and its net revenue approximately $56,000.00. He estimated that the Mt. Whitney company would be able to handle this business at a saving of not less than $25,000.00 per annum.

Out of the proceeds of the sale and its notes and accounts receivable, the Tulare County Power Company expects to pay off the outstanding indebtedness upon its properties, other than that assumed by the Mt. Whitney company, and distribute the balance of its assets among its stockholders.

The Tulare County Power Company has heretofore been granted authority to issue stock for the purpose of making a settlement with certain of its creditors. These creditors were represented at the hearing in this matter and an agreement was reached by which this stock will be issued in satisfaction of the claims of these creditors.

Approximately 90 per cent of the preferred stockholders of the Tulare company have signed agreements, waiving their right to receive par value for their stock, and agreeing to take only the 7 per cent interest which has accrued thereon and to pro rate the balance of the proceeds of the sale with the common and consumers stockholders. Mr. Holley testified that the result of this will be that the preferred stockholders would receive approximately $71.00 or $72.00 per share for their holdings and the common and consumers stockholders approximately $51.00 or $52.00 per share.

The deed of transfer provides that all franchises of the Tulare company shall be transferred to the Mt. Whitney company. These franchises are as follows:

The county of Tulare, granted November 7, 1911, term fifty years;
The city of Lindsay, granted March 5, 1911, term fifty years;
The city of Tulare, granted March 18, 1912, term fifty years;
The city of Exeter, granted March 22, 1912, term fifty years.

Each of these franchises provides that after the first five years the company shall pay annually to the grantor 2 per cent of its gross receipts. The original cost of these franchises to the Tulare company is stated to be the sum of $6,513.52.

Covering the same territory Mt. Whitney Power and Electric Company has franchises as follows:

The county of Tulare, granted November 9, 1898, term fifty years.
The city of Tulare, granted November 20, 1899, term fifty years.

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Neither of these franchises provide for the payment by the Mt. Whitney company of a proportion of its gross receipts to the grantor.

The franchise from the county of Tulare was granted previous to the incorporation of the cities of Lindsay and Exeter; hence the Mt. Whitney company has no special franchises in these cities.

The bulk of the business of Tulare County Power Company comes from its agricultural load. The company supplies power for purposes of pump irrigation principally in the citrus fruit orchards and alfalfa fields of Tulare County.

Mt. Whitney Power and Electric Company also has an extensive agricultural business in this territory. Naturally a consolidation of the properties of these two companies will result in a duplication of facilities. According to the testimony, Mt. Whitney Power and Electric Company would not have present use for the steam plant of the Tulare County Power Company, but would use it as an auxiliary supply.

It is in the testimony further that Mt. Whitney Power and Electric Company would come into possession through the purchase of Tulare County Power Company of power lines serving territory in which the Mt. Whitney Power and Electric Company already possessed ample feeders.

Witnesses for the applicants herein stated that the Mt. Whitney Power and Electric Company would gradually unify these two systems, removing the duplicate lines to new territory now awaiting service.

As a duplicate service of course will continue under the competition as at present existing between these two applicants, such objections as there could now be against the duplication would lie with additional force against the continued increase in this duplication.

It is of course patent as stated frequently in the opinions of this Commission that such investment as has been made beyond the actual needs of the service must in the end be an extra burden either upon the rate payer or the stockholders of one or both of these companies.

Witness for Tulare County Power Company stated that the competitive condition was brought about through the unsatisfactory service of Mt. Whitney Power and Electric Company, which led to the formation of the Tulare County Power Company with several hundred residents of Tulare County, chiefly farmers, as stockholders.

Witness also testified that most of the unsatisfactory features of the service of Mt. Whitney Power and Electric Company which brought the Tulare County Power Company into being had now been eliminated, due to the regulation by the state and the force of competition.

The representative of Tulare County Power Company testified that the consumers whom he represented were now of the opinion that the

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regulation by the State through this Commission had proved and would prove ample to protect their interests.

I am of the opinion from the evidence in this matter that the Mt. Whitney Power and Electric Company can give full and satisfactory service to the present patrons of Tulare County Power Company.

I am of the opinion also that this service can be given with no increase in the rates as now charged against the patrons of Tulare County Power Company, as all of these patrons are now on the same basis, without discrimination in favor of stockholders.

I believe also that the present financial condition of Tulare County Power Company is a critical one and that there is a very grave question whether it could much longer continue to serve its patrons as they should be served.

It would appear, therefore, that there remains to be considered one other element of importance in this situation, and that is the ability of Mt. Whitney Power and Electric Company to absorb the duplicated facilities without injury either to its patrons or to itself.

It appears from the testimony that the witnesses estimated the gross return which Mt. Whitney company would receive from the Tulare County Power Company's property at a sum ranging from $175,000.00 to $180,000.00 per year. The net return is estimated at $80,000.00 per year. These estimates are based upon the present rates.

It would appear, therefore, that Mt. Whitney Power and Electric Company could set up a special depreciation reserve against those portions of the duplicated properties which could not be removed from their present location and made otherwise serviceable.

This special depreciation reserve should be of such dimensions as to enable Mt. Whitney Power and Electric Company gradually to write off such portions of the Tulare company's plant as can not economically be welded into its system on an adequate revenue producing basis.

After a consideration of the evidence submitted by the applicants, I am of the opinion that this application should be granted, and I submit the following form of order:

ORDER.

Tulare County Power Company, having applied to this Commission for authority to sell its properties to the Mt. Whitney Power and Electric Company, and the latter company having applied to this Commission for authority to purchase the same; and it appearing to this Commission that applicant's request is reasonable and that public convenience will be served by the transfer herein proposed,

It is hereby ordered that Tulare County Power Company be, and it is hereby, authorized to transfer to Mt. Whitney Power and Electric Company all its property, being the properties more fully described in

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Exhibit "C" attached to the original application, and according to the terms of an agreement dated June 30, 1915, a copy of which is attached to the original application herein and marked Exhibit "B".

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The price at which the properties of the Tulare County Power Company are transferred to Mt. Whitney Power and Electric Company shall not be binding upon this Commission, or any other public body, as representing the value of said properties for rate making or other purposes.

2. Tulare County Power Company shall transfer its franchises to Mt. Whitney Power and Electric Company only after Mt. Whitney Power and Electric Company shall have filed with this Commission a statement naming the franchises under which it will henceforth operate, and only after this Commission shall have issued a supplemental order finally approving the transfer of such franchises.

3. Within thirty days from the date of this order, Mt. Whitney Power and Electric Company shall file with this Commission a stipulation to the effect that it does not, and never will, claim in any proceeding before this Commission, or any other public body, a value for the franchises acquired by it from Tulare County Power Company in excess of the actual cost to Tulare County Power Company of acquiring said franchises.

4. The authority herein granted shall apply only to such transfer of property as shall take place on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of July, 1915.

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DECISION No. 2630.

IN THE MATTER OF THE APPLICATION OF THE CONSOLIDATED WATER COMPANY OF POMONA FOR AUTHORIZATION TO SELL CERTAIN REAL ESTATE, WATER RIGHTS, AND A WATER DISTRIBUTING SYSTEM TO THE CITY OF POMONA AND FOR SAID CITY TO PURCHASE SAID PROPERTY AND THE RAILROAD COMMISSION TO FIX A VALUE THEREFOR.

Application No. 1463.

Decided July 24, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The parties to this application having asked that this application be dismissed,

It is hereby ordered that this application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 24th day of July, 1915.

DECISION No. 2631.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY OF SANTA BARBARA TO RENEW PROMISSORY NOTE IN THE AMOUNT OF FIVE THOUSAND DOLLARS.

Application No. 1791.

Decided July 24, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject-matter of this application having been covered in a supplemental order heretofore issued in Application No. 1612, on July 20, 1915.

It is hereby ordered that this application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 24th day of July, 1915.

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DECISION No. 2632.

IN THE MATTER OF THE APPLICATION OF HALF MOON BAY LIGHT AND POWER COMPANY FOR AN ORDER PERMITTING RENEWAL OF A CERTAIN PROMISSORY NOTE ISSUED TO FIRST NATIONAL BANK OF LIVERMORE.

Application No. 1781.

Decided July 24, 1915.

Applicant authorized to issue its promissory note for a period of not to exceed one year at interest of not to exceed 8 per cent for the purposes of renewing the unpaid balance of a promissory note heretofore issued to the First National Bank of Livermore.

W. H. Chapman, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Half Moon Bay Light and Power Company for authority to issue a promissory note in the sum of $3,000.00, bearing interest at 8 per cent per annum, to First National Bank of Livermore, in order to refund the unpaid balance on a demand note maturing July 27, 1915, originally in the principal sum of $5,000.00.

Witness for the applicant testified that the proceeds from the original note were used in new construction and in the purchase of material therefor.

After a consideration of the evidence I am of the opinion that the company's application is proper and should be granted, and I accordingly submit the following form of order:

ORDER.

Half Moon Bay Light and Power Company having applied to this Commission for authority to issue a promissory note in the sum of $3,000.00 as hereinabove set forth;

And a hearing having been held, and it appearing to this Commission that the purposes for which applicant proposes to issue said note are not properly chargeable to operating expenses, or to income,

It is hereby ordered that Half Moon Bay Light and Power Company be, and it is hereby, authorized to issue a promissory note in the sum of $3,000.00 for a period not exceeding one year, payable to the First National Bank of Livermore and bearing interest at not to exceed 8 per cent per annum, for the purpose of renewing the unpaid balance on a promissory note payable to said First National Bank of Livermore, maturing July 27, 1915.

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The authority herein granted to issue said note is granted upon the following conditions, and not otherwise:

1. Within thirty days after the note herein authorized shall have been issued, applicant shall make report of such issue to this Commission.

2. The authority herein granted to issue said promissory note shall apply only to such note as shall have been issued by the applicant on or before the first day of November, 1915.

3. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed by the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of July, 1915.

DECISION No. 2633.

IN THE MATTER OF THE APPLICATION OF MT. WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE FOUR HUNDRED AND FORTY THOUSAND DOLLARS FACE VALUE OF FIRST MORTGAGE SIX PER CENT BONDS.

Application No. 1766.

Decided July 24, 1915.

Mt. Whitney Power and Electric Company having made arrangements to purchase the property of the Tulare County Power Company applies for permission to issue $440,000.00 face value of its 6 per cent bonds to be sold at not less than 95, proceeds to be applied toward the purchase of the properties named, the balance of such purchase price to come from cash on hand and earnings. Application granted.

Charles R. Blyth, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Mt. Whitney Power and Electric Company for authority to issue $440,000.00 par value of its first mortgage 6 per cent bonds, being 80 per cent of the purchase price of the properties of Tulare County Power Company, which applicant was authorized to acquire by Decision No. 2629.

Mt. Whitney Power and Electric Company has agreed to pay for the properties of the Tulare County Power Company the sum of $550,000.00.

These properties consist of a steam plant and distributing lines in Tulare County, serving the towns of Lindsay, Exeter, Tulare, Visalia

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and surrounding territory. The details of this purchase are more fully set forth in the above mentioned decision, reference to which is hereby made.

Mt. Whitney Power and Electric Company has an authorized bonded indebtedness of $5,000,000.00, secured by a first mortgage dated October 1, 1909, to the Bankers Trust Company of New York, trustee. At the present time it has outstanding under this mortgage bonds to the face value of $2,623,000.00. The trust deed securing these bonds provides for their issuance in amounts not exceeding 80 per cent of the cost of permanent additions and betterments; provided that the net earnings for the twelve months preceding shall not be less than twice the annual interest charges upon the outstanding bonds and those applied for.

The financial condition of applicant, as set forth in the following income account for the year ending May 31, 1915, shows net earnings available for bond interest in at least twice the amount necessary to pay interest on the outstanding bonds and those which applicant is now asking authority to issue.

INCOME ACCOUNT.

Year ending May 31, 1915.

Operating revenue	$671,901 26
Miscellaneous revenue	15,038 70
Total	$686,939 96
Uncollectible bills	7,350 20
Gross corporate income	$679,589 76
Less operating expenses	311,008 43
Net corporate income	$368,581 33
Bond interest paid	150,490 48
	$218,090 85
Other deductions	49,426 58
Surplus	$168,664 27

At the hearing of the application of Mt. Whitney Power and Electric Company to acquire the properties of the Tulare County Power Company, which proceedings by stipulation are in evidence in the present application, Mr. Holley, secretary and director of the Tulare company, estimated that the gross operating revenue of that company for the next twelve months would amount to approximately $181,285.00 and its net revenue approximately $56,000.00. He further estimated that Mt. Whitney company would be able to handle this business at a saving of not less than $25,000.00 per annum.

The Mt. Whitney company states that the balance of the purchase price necessary to pay for the properties of the Tulare County Power Company, over and above the amount to be secured from the issue of

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bonds herein applied for, will be taken care of out of its current assets and earnings, there being no intention to apply for an issue of additional securities.

After a consideration of the evidence submitted by the applicant I am of the opinion that this application should be granted, and I accordingly submit the following form of order:

ORDER.

Mt. Whitney Power and Electric Company having applied to this Commission for authority to issue $440,000.00 of its first mortgage 6 per cent sinking fund gold bonds, secured by deed of trust to Bankers Trust Company of New York, dated October 1, 1909, for the purposes hereinbefore set forth;

And it appearing to this Commission that the purposes for which Mt. Whitney Power and Electric Company proposes to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Mt. Whitney Power and Electric Company be, and it is hereby, authorized to issue and sell $440,000.00 par value of its first mortgage 6 per cent sinking fund gold bonds for the purposes set forth in the opinion which precedes this order.

The authority herein granted is made upon the following conditions, and not otherwise:

1. The bonds herein authorized shall be issued at a price which will net the company not less than 95 per cent of their face value and accrued interest.

2. Pending the sale of the bonds herein authorized to be issued, applicant may pledge said bonds as collateral security for the notes to be given to Tulare County Power Company as part of the purchase price of the properties of said company; provided, however, that the bonds issued under authority of this paragraph shall not be pledged at a ratio less than an equal amount face value of bonds for an equal amount face value of notes.

3. The value of the bonds herein authorized to be issued shall not be binding upon this Commission or any other public body as representing the value, or a measure of the value, of the properties of the Tulare County Power Company for rate making or other purposes.

4. Mt. Whitney Power and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued; and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys,

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all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

6. The authority herein granted shall apply only to such bonds as shall have been issued on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of July, 1915.

DECISION NO. 2634.

IN THE MATTER OF THE APPLICATION OF THE CITY OF ALHAMBRA, LOS ANGELES COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT SECOND STREET AT GRADE OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY, IN ALHAMBRA, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 1683.

Decided July 24, 1915.

City of Alhambra applies for permission to construct Second street at grade across the tracks of the Southern Pacific Company in said city, and an investigation showing that the railroad company's tracks lie at a depth of 3½ feet which it proposes to further deepen to 9½ feet, that owing thereto and to the number of trains that pass daily, this proposed crossing would be extremely dangerous and that public convenience is amply served by crossings within close proximity to the one proposed, application denied, and recommendation made to railroad company that the installation of an automatic flagman at Fourth street crossing would considerably lessen the danger thereof.

Alfred Barstow, city attorney, for Applicant.

Geo. D. Squires, for Southern Pacific Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

City of Alhambra, in this application, asks permission of the Commission to construct Second street at grade across a passing track and the main line track of Southern Pacific Company. The main line track sought to be crossed is the Southern Pacific's main track from Los Angeles to Yuma and the east which runs through the city of Alhambra in a northeasterly and southeasterly direction.

Mission road is to the north of the right of way of the Southern Pacific, is adjacent to the right of way and parallel with it. Second

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street, north of the track, is at right angles to the right of way and joins Mission road at the site of this proposed crossing. South of the track Second street abuts the right of way line and forms an angle of about 60 degrees with it. It is the intention to construct Second street northward over the tracks to a junction with Second street north of the tracks where it joins Mission road.

The Southern Pacific opposed the granting of this application, basing its opposition on the grounds that the crossing would interfere with future plans for double tracking and grade revision; that it would be dangerous and that it was not demanded by public necessity and convenience.

At the site of this proposed crossing the tracks are in a cut about 3½ feet in depth, and the grades in both directions are descending. The company proposes to reduce this grade to the north and to lower the summit about 6 feet at this point, which would make the proposed crossing in a cut about 9½ feet in depth. With the cut at its present depth, I am satisfied that this crossing would be more dangerous than the average crossing, and with the depth of the cut 6 feet deeper a pocket would be formed from which it would be impossible to see an approaching train even if suitable grades of approach could be secured; and it would be difficult to do this on account of the proximity of Mission road to the north.

It was stated by counsel for the applicant that these plans of the Southern Pacific Company had been in existence for many years and might not be carried out for many years in the future. There are at the present time twenty-four schedule trains over this track per day and there have been times when as many extra trains have been run. It seems reasonable to suppose that with this amount of traffic plans looking to a reduction in the grade will eventually be carried out and, as a matter of fact, the engineer for the Southern Pacific testified that bridge renewals in this vicinity were being made now with that in view, and that operating conditions were at present such that double tracking and grade reduction would very soon be necessary.

Under these circumstances and in view of the large number of trains passing daily over the site of this proposed crossing, it is evident that this application should not be granted unless the need shown for it is imperative, and I am convinced that no such need exists.

Second street north of the track is a through street and runs to the business section of the city. South of the track, however, it is not a through street; is less than 1,000 feet long, and has less than a dozen houses located upon it. Fourth street, 620 feet west of Second, and Garfield avenue, 573 feet east, are streets open across the track and Palmetto street, running east and west between them, crosses Second street and makes Fourth and Garfield streets readily accessible to those

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who live on Second street or on Palmetto near Second street, and who may be supposed to be those to whom this crossing would be a matter of convenience. This fact convinces me that this crossing is not absolutely necessary, and that in fact it would prove to be a convenience to only the few people who live along it or who live close to it on Palmetto street.

Recent statistics compiled by the Commission show that 65 people were killed and 314 injured in grade crossing accidents in California during the year ending June 30, 1915. This indicates, to my mind, that there are now too many grade crossings in the state, and that those in existence should be protected or abolished rather than have their number increased. Certainly it proves that the Commission's attitude has been correct in ruling that no new crossings shall be opened unless it is impossible to avoid them.

At the hearing Fourth and Sixth streets were referred to as being dangerous crossings. The Commission's engineering department has inspected them, and from its report I believe it will be well for the Southern Pacific Company to protect them with automatic flagmen, and I recommend this for that company's consideration.

Garfield avenue is at present protected by an automatic flagman and with Fourth street so protected, I am of the opinion that these two comparatively safe crossings will amply take care of the travel over the tracks in this vicinity without undue inconvenience.

I recommend the following form of order:

ORDER.

City of Alhambra, Los Angeles County, California, having on May 21, 1915, applied to the Commission for permission to construct Second street at grade across the tracks of Southern Pacific Company, and a public hearing having been held, at which all interested parties were represented, and it appearing for the reasons set forth in the foregoing opinion, that public necessity and convenience do not require the opening of this crossing, and that this application should not be granted,

It is hereby ordered that this application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of July, 1915.

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DECISION NO. 2635.

TOWN OF HAYWARD

vs.

SAN LORENZO WATER COMPANY.

Case No. 445.

Decided July 24, 1915.

Complaint of the Town of Hayward attacks the service of defendant company particularly as regards the size of mains along certain streets and the inadequacy of pressure during summer months and after investigation defendant is directed to install a 6-inch main along "C" street, between Third and Fifth, and a 4-inch main along "C" street, between Fifth and Sixth; also, to proceed to meter all consumers.

Frank Mitchell, Jr., for Complainant.

Pillsbury, Madison and Sutro, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The complaint of the Town of Hayward was originally filed with this Commission on August 8, 1913, and on September 3, 1913, particular complaint was made by letter, alleging that the people of Hayward had been entirely without service. Investigation by the hydraulic engineer of the Commission was made immediately, and the difficulty was temporarily adjusted. By stipulation of both parties the time within which the defendants should make answer to the matters complained of was periodically set forward to July 1, 1914, from which time until April 23, 1915, the matter of this complaint was not again brought into question. On the date last mentioned the Town of Hayward, by its town clerk, Mr. J. D. Armstrong, requested that the complaint proceed to hearing, and pursuant to request of the Commission the Hayward Water Company, successor of the San Lorenzo Water Company, filed answer to the original complaint. The original complaint was superseded by an amended complaint filed with the Commission on June 22, 1915, and public hearing was conducted in this proceeding on July 1, 1915, at the Commission's office in San Francisco, California.

The original complaint alleges in effect that the facilities and service of the San Lorenzo Water Company are inadequate, particularly in that proper fire protection is not provided, and recites that while the pressure maintained in the water pipes of the company is at times

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60 pounds, during the afternoons and evenings for months prior to June, 1913, the pressure has been 25 pounds and less. It is requested that the Commission order defendant to put in 6-inch mains throughout the town of Hayward where mains of less size are at present installed, and to require that at all times there be maintained a pressure of not less than 75 pounds in the water mains, and that the reservoir of defendant be kept full of water at all times.

The answer to this complaint denies that the facilities or service used in the distribution of water by either the San Lorenzo Water Company or the Hayward Water Company have been or are inadequate. It is particularly denied that the pressure is 25 pounds or less during the afternoons and evenings, or was so during the period prior to June, 1913, and claimed that in the system there has been maintained a pressure of not less than 40 or 45 pounds. It is particularly claimed by the company that it should not and cannot maintain its reservoir full of water at all times, and that it is impracticable and impossible to maintain in the mains of defendant a pressure at all times of 75 pounds, as such a pressure would cause the overflow of the reservoir. It is admitted that during the summer of 1913, due to excessive drought and to the breach of rules of the company by the consumers, that there was a shortage of water in the system. It is stated that on the 12th day of July, 1913, a portion of the machinery in the pumping plant of defendant was broken, and that a fire occurred at that time, but that the defendant furnished all the water possible and necessary for fire protection, and that since that time service and facilities have been in every way adequate and sufficient.

The amended complaint calls the attention to the Commission to the transfer of this utility property to the present owners, the Hayward Water Company, and in addition to the points raised in the original complaint calls attention to the particular need of mains of increased size along "C" and First streets. In other particulars the original complaint is unchanged.

The hydraulic engineers of the Commission made investigation of the conditions obtaining at Hayward, and Mr. C. I. Rhodes, assistant engineer, presented a report, prepared by himself, during the hearing and testified in regard to the present facilities and the practices of the company. In addition, Mr. H. E. Brunner and Mr. M. G. Riggs, the latter fire chief of the town of Hayward, testified for complainant, and Mr. E. S. Warren, manager, and Mr. Geo. L. Dillman, consulting engineer, testified on behalf of defendant.

While the information obtainable is somewhat fragmentary and unsatisfactory, it appears, from the weight of the testimony, that the

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company has not at all times maintained a pressure in its mains greater than 40 pounds, but that the pressure has a number of times fallen as low as 25 pounds at the point where the continuous record was made, a small house in the rear of 1078 "D" street, between Main and First streets. The report of Mr. Rhodes states that according to the charts developed by this pressure gage, the pressure from June 1 to June 18, 1915, ranged from 20 to 60 pounds. The low pressure occurring between 4 and 9 p. m.

It is further established that a number of consumers residing a considerable distance from the center of Hayward, toward the northwest, who receive service through the main along "B" street, receive little or no water during a large part of the day in the middle of the summer.

A tabulation of pressure measurements taken with fire apparatus in operation shows inadequate fire service under present conditions. On the day when the inspection was made, June 18, 1915, counsel and witnesses for defendant contended that the reason for such inadequacy as may now obtain is in the large use of water by the consumers, and particularly that the consumers do not observe the established rules of the company in regard to sprinkling conditions and hours, and orders to turn off water during fires.

It is granted by representatives of both complainant and defendant that the metering of the system will in part, at least, ameliorate the present conditions, and I will recommend that the defendant be ordered to immediately proceed with the full metering of the system.

The town of Hayward has signified its intention to pave "C" street from Third to Sixth streets, and is particularly desirous that the company immediately install the 6-inch main for this distance. The company makes particular objection to the installation of the 6-inch main between Fifth and Sixth streets, claiming that this is needed only for the installation of a fire hydrant at Sixth and "C" streets, and that there are no consumers of this company along this block. There is a 6-inch main already installed on "B" street and from this main a 2-inch lateral along Sixth street to Sixth and "C" streets. The installation of a main to provide sufficient service for a hydrant at this point along "C" street will benefit the company through the increased circulation, and will also provide reasonable service for consumers who may in the future request service in this block. Less than a 4-inch main does not seem adequate, and a 6-inch main, according to the testimony, is not necessary. I will, therefore, recommend that the company install a 6-inch main from "C" street, between Third and Fifth streets, and a 4-inch main on "C" street, between Fifth and Sixth streets.

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I recommend the following form of order:

ORDER.

The Town of Hayward having made complaint against the San Lorenzo Water Company, now succeeded by Hayward Water Company, alleging inadequate service, and a public hearing having been conducted, and the Commission being fully apprised in the premises, it is hereby found as a fact that the service and facilities of the defendant are adequate, and that the facilities ordered to be installed by the defendant are proper and reasonable improvements, and basing this order on the foregoing findings of fact and the further findings of fact as are contained in the proceeding,

It is hereby ordered that the Hayward Water Company, within sixty days, install a 6-inch main pipe line on "C" street, between Third and Fifth streets, and a 4-inch main pipe line on "C" street, between Fifth and Sixth streets, and connect these lines regularly with its system.

It is further ordered that the Hayward Water Company proceed to install meters upon all consumers to whom it provides service, the installation of these meters to be conducted with due diligence. Meters to be installed within ninety days on all consumers who have in the past paid an average water bill of $1.50 per month, or more.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of July, 1915.

DECISION No. 2636.

IN THE MATTER OF THE APPLICATION OF STOCKTON TERMINAL AND EASTERN RAILROAD COMPANY FOR AN ORDER SUPPLEMENTING DECISION NO. 514.

Application No. 336.

Decided July 28, 1915.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

Whereas Stockton Terminal and Eastern Railroad Company requests this Commission to amend Decision No. 514, dated March 20, 1913, so as to permit it to sell at 80 per cent of face value and accrued interest,

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enough bonds to realize $1,515.85, the estimated cost of a shop building and engine house,

It is hereby ordered that Stockton Terminal and Eastern Railroad Company be given authority, and it is hereby given authority, to sell $2,000.00 face value of its first mortgage 6 per cent gold bonds, and to use the proceeds obtained from the sale of said bonds to construct a shop building and engine house, the cost of which is estimated at $1,515.85, as per statement attached to this application.

It is hereby further ordered that Decision No. 514 of this Commission authorizing applicant to sell bonds be amended so as to extend the time to October 31, 1915, in which the applicant may issue $2,000.00 and no more of the bonds therein authorized.

It is further ordered that the bonds herein authorized to be issued shall be issued and sold on or before October 31, 1915, and shall net the applicant not less than 80 per cent of face value plus accrued interest thereon.

It is hereby further ordered that the orders made by this Commission in the above entitled proceeding shall remain in full force and effect except as to those provisions and conditions which may be in conflict with this third supplemental order.

The foregoing third supplemental order is hereby approved and ordered filed as the third supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of July, 1915.

DECISION No. 2637.

IN THE MATTER OF THE APPLICATION OF OROSI ORANGE LAND COMPANY TO SELL AND THE COVE WATER COMPANY TO PURCHASE THE DOMESTIC WATER SYSTEM LOCATED AT THE TOWN OF ORANGE COVE, FRESNO COUNTY, CALIFORNIA.

Application No. 1782.

Decided July 28, 1915.

Orosi Orange Land Company owning a small water system which it desires to separate from its other business, applies for permission to transfer same to The Cove Water Company for a consideration of 800 shares of stock of the par value of $1.00 per share of the latter company. Application granted; also Cove Water Company authorized to issue 803 shares of stock, 800 in exchange for water system and 3 shares to directors.

Stuart O'Melveny, for Applicant.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of Orosi Orange Land Company for authority to sell a small water system serving the town of Orange Cove, Fresno County, to The Cove Water Company, in exchange for 800 shares of stock of the latter company of the par value of $1.00 per share.

Orosi Orange Land Company is the owner of approximately 54,000 acres of land in Fresno and Tulare counties. The townsite of Orange Cove is in the center of this tract. At the present time the town has approximately 25 inhabitants.

About 1912 Orosi Orange Land Company began the construction of a small water system for the purpose of serving the townsite with water. This system consists of a well from which water is pumped, a small pump and the necessary machinery for pumping water and pipes for carrying and distributing water to the inhabitants of the town.

Applicant represents that the total cash outlay for the construction of this system to May 1, 1915, is the sum of $860.91.

Orosi Orange Land Company desires to sell this system in order that it may be free from the burdens of a public utility, and to this end it has caused to be incorporated The Cove Water Company, with an authorized capital stock of $5,000.00, divided into 5,000 shares of the par value of $1.00 each.

If it were the intention of Orosi Orange Land Company to dispose of this stock to the public, I should require further evidence as to the present value of this system and its earning capacity. It is my understanding, however, that applicant proposes to retain possession of this stock in order to control the water system at Orange Cove, and under these circumstances I believe that the application may be granted.

I submit the following form of order:

ORDER.

Orosi Orange Land Company having applied to this Commission for authority to transfer a certain water utility system in Orange Cove, Fresno County, to The Cove Water Company in exchange for 800 shares of stock of the latter company, as hereinbefore set forth;

And a hearing having been held, and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which it is proposed to issue said stock are not reasonably chargeable in whole or in part to operating expenses or to income,

It is hereby ordered that Orosi Orange Land Company be, and it is hereby, authorized to transfer a water utility system now owned and

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operated by it in Orange Cove, Fresno County, which properties are more fully described in a statement attached hereto and marked Exhibit "A," to The Cove Water Company.

It is further ordered that The Cove Water Company be, and it is hereby, authorized to issue 803 shares of its capital stock of the par value of $1.00 per share, for the following purposes, to wit:

Eight hundred shares to Orosi Orange Land Company in exchange for the properties herein authorized to be transferred;

Three shares to Warren B. Pinney, E. A. Holmes and Thomas S. Bell, directors of The Cove Water Company, for the purpose of qualifying said directors.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The Cove Water Company shall issue the stock herein authorized to be issued at not less than the par value of $1.00 per share;

2. The par value of the stock herein authorized to be issued shall not be binding upon this Commission or any other public body as representing the value of the properties of The Cove Water Company for rate making or other purposes;

3. The authority herein granted for transfer of property and issue of stock shall apply only to such transfer of property and such issue of stock as shall have taken place on or before January 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of July, 1915.

EXHIBIT "A."

All that real property situated in the county of Fresno, State of California, described as follows:

Block eighty (80) in section thirteen (13), township fifteen (15) south, range 24 east, M. D. B. and M., reserving and excepting therefrom all rights of way as of record.

Also, the domestic water system in the town of Orange Cove, consisting of an engine and pumps, a tank and tools and appliances situated upon the above described premises; also, all water mains, service and connections in and about said premises and said town of Orange Cove, which are used for the purpose of carrying and delivering water; it being the intention of said Orosi Orange Land Company to convey all personal property of every character in and about said town of Orange Cove owned by it and which is and heretofore has been used as a part of its water system.

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DECISION No. 2638.

IN THE MATTER OF THE APPLICATION OF SOUTH LOS ANGELES WATER COMPANY FOR AN ORDER AUTHORIZING THE SALE OF REAL ESTATE.

Application No. 1804.

Decided July 28, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

South Los Angeles Water Company having applied to this Commission for an order authorizing the sale of certain real property in Los Angeles County,

And it appearing to this Commission that said property is not necessary or useful to applicant in the performance of its duties to the public and that, therefore, the permission of this Commission is not necessary before such sale can be consummated,

It is hereby ordered that the application of South Los Angeles Water Company in the above entitled matter be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 28th day of July, 1915.

DECISION No. 2639.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO INSTALL TELEPHONE PLANT, AND TO PUBLISH, FILE AND PUT INTO EFFECT RATES FOR SERVICE AT SLATINGTON, EL DORADO COUNTY, CALIFORNIA.

Application No. 1801.

Decided July 29, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

It appearing that this application need not have been made a formal matter, and that the subject-matter thereof has been informally adjusted,

It is hereby ordered that this application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 29th day of July, 1915.

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DECISION No. 2640.

THOMAS MONAHAN, AS MAYOR OF THE CITY OF SAN JOSE,

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 478.

Decided July 29, 1915.

John W. Sullivan, for complainant.

Charles P. Cutten, for defendant.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

It appearing that there are typographical errors in the opinion and order heretofore made in this proceeding,

It is hereby ordered that the statement of rates appearing in the opinion and order rendered herein on the 8th day of July, 1915, is hereby corrected to read as follows:

SCHEDULE "A" RATE FOR ARTIFICIAL GAS.

Applicable to All Classes of Consumers.

$1.00 per 1000 cubic feet for the first 5,000 cubic feet of gas used per month.
.90 per 1000 cubic feet for the next 5,000 cubic feet of gas used per month.
.80 per 1000 cubic feet for the next 10,000 cubic feet of gas used per month.
.70 per 1000 cubic feet for all over 20,000 cubic feet of gas used per month.
Minimum monthly charge 50 cents per meter.

This rate contemplates the service of manufactured oil gas of an average heating value not less than 600 British thermal units per cubic foot.

Dated at San Francisco, California, this 29th day of July, 1915.

DECISION No. 2641.

IN THE MATTER OF THE APPLICATION OF UNITED LIGHT AND POWER COMPANY AND SUBSIDIARY COMPANIES.

Application No. 1542.

Decided July 30, 1915.

The Commission, having heretofore, by supplemental order, approved the mortgage and deed of trust of Consolidated Electric Company, applicant now applies for permission to amend same in certain particulars beneficial to bondholders, application granted.

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REPORT OF THE COMMISSION.

FOURTH SUPPLEMENTAL OPINION.

On July 13, 1915, this Commission, in the above entitled matter, issued its third supplemental order, in which among other things it approved the mortgage and deed of trust securing the payment of $2,500,000.00 face value of general mortgage 5 per cent forty-year gold bonds of Consolidated Electric Company.

Applicants in the above entitled matter now request that Consolidated Electric Company be permitted to amend and modify the mortgage and deed of trust heretofore approved by the Commission.

In the first place, it is proposed to add to section 8 of article II the following:

> But nothing in this indenture contained shall be construed to prevent the Electric company (*a*) From exchanging any public franchise held by it for another franchise giving it similar powers or privileges of operation, and which, in the opinion of the Electric company, and of the trustee, shall be more favorable to the Electric company than the franchise so surrendered; or (*b*) From abandoning or transferring any franchise or privilege which, in the opinion of the Electric company, and of the trustee, shall have become unnecessary or undesirable for the Electric company's operation.

In the second place, it is proposed to eliminate all of article X, which empowers a certain per cent of the bondholders to amend and modify the mortgage and deed of trust. The elimination of this article affords greater protection to the individual bondholder.

In the third place, it is proposed to substitute for the guaranty clause in article XIV the following:

> The guarantor, in consideration of the issuance to said guarantor, at or before the execution of these presents, of ninety-seven (97) fully paid shares of the common stock, being all of the capital stock of the Electric company except three (3) shares, agrees to guarantee, and does hereby guarantee, for itself, its successors and assigns, the prompt and punctual payment of the principal of, and the interest upon, all of the bonds to be issued hereunder, secured hereby.

The amendment eliminates the following conditions:

> Upon the express condition, however, that prior to, or contemporaneously with the execution of these presents, the Electric company has acquired a valid and unimpeachable title to, and the absolute and beneficial ownership of all the business, credits, franchises, choses in action, book accounts, book of account, corporate records, moneys, and other property and assets, real personal and mixed tangible and intangible of United Light and Power Company (of California), Central Light and Power Company, Consumers Light and Power Company, Equitable Light and Power

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Company, Southside Light and Power Company, and United Light and Power Company (of New Jersey), discharged from all liability for any of the debts or other obligations of said companies, and unincumbered save and except by the lien of the mortgage securing not to exceed one hundred thousand (100,000) dollars, face amount, of bonds of said Consumers Light and Power Company, and save and except the lien of the mortgage securing not to exceed one hundred and forty-three thousand (143,000) dollars, face amount of bonds of said Central Oakland Light and Power Company; and upon further express condition, that at the time of the execution of these presents, the Electric company has no indebtedness and that its property is free from all liens and incumbrances, save and except the liens in this article specified.

The purpose of this last amendment is to make the guaranty of Great Western Power Company fixed and definite, instead of contingent upon the performance of certain conditions precedent.

We submit the following form of order:

FOURTH SUPPLEMENTAL ORDER.

This Commission on July 13, 1915 (Decision No. 2596), having issued its third supplemental order in the above entitled matter authorizing Consolidated Electric Company, among other things, to execute a mortgage and deed of trust, and applicants now having requested authority to amend and modify said mortgage and deed of trust, as stated in the foregoing fourth supplemental opinion,

It is hereby ordered that Consolidated Electric Company be granted authority, and it is hereby granted authority, to amend and modify the mortgage and deed of trust approved by this Commission July 13, 1915 (Decision No. 2596), as outlined in the foregoing fourth supplemental opinion.

Dated at San Francisco, California, this 30th day of July, 1915.

DECISION NO. 2642.

IN THE MATTER OF THE APPLICATION OF THE OCEAN SHORE RAILROAD COMPANY FOR PERMISSION TO INCREASE RATES ON SAND AND GRAVEL, CRUSHED ROCK, ETC., FROM POINTS LOCATED ON ITS LINE TO SAN FRANCISCO.

Application No. 1312.

Decided July 30, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING APPLICATION FOR REHEARING.

Application having been made by E. B. and A. L. Stone Company for a rehearing in the above-entitled matter, and it appearing to the

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Commission that no new evidence is offered to be produced and that all of the matters set out in said application were fully considered in making the order complained of,

It is hereby ordered by the Railroad Commission of the State of California that the application for rehearing herein be, and the same is, hereby denied.

Dated at San Francisco, California, this 30th day of July, 1915.

DECISION NO. 2643.

IN THE MATTER OF THE APPLICATION OF HAYWARD WATER COMPANY FOR AUTHORITY TO INCREASE WATER RATES IN THE TOWN OF HAYWARD AND IMMEDIATE VICINITY.

Application No. 1747.

Decided July 30, 1915.

Applicant, contending that its present rates do not provide sufficient revenues to take care of depreciation and a return upon its investment, apply for permission to increase same approximately 58 per cent, and after an investigation into its property values and earnings and expenses in which the sum of $110,000 is established as a proper amount on which it is entitled to return, the following meter rates are established to become effective as soon as applicant shall have metered its system and installed certain improvements heretofore directed: Minimum monthly charge of $1.00 entitling consumer to 300 cubic feet with a charge of 25 cents per 100 cu. ft. for additional amounts up to 5,000 cu. ft. and 15 cents per 100 cu. ft. for amounts over 5,000 cu. ft. Rates also established for street sprinkling and fire service, the present flat rates to remain pending the installation of meters.

Pillsbury, Madison and Sutro, by *Oscar Sutro,* for Applicant.

Frank Mitchell, Jr., for the Town of Hayward.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The application of the Hayward Water Company recites that applicant is operating a water system for the supply of water for domestic and other purposes in and in the vicinity of Hayward, Alameda County, and that the returns now being received from all consumers are inadequate for the payment of running expenses and establishment of a depreciation fund, and a return on the investment in the system.

Under its articles of incorporation the utility company has an authorized capitalization of 2,000 shares of common stock at $100.00 par value. The order of the Railroad Commission in proceeding under

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Application No. 1175, gave authority for the issuance of 1,280 shares of capital stock. There is no preferred stock, and no outstanding indebtedness of any sort.

It is stated that no dividends have been paid from the operation of this property during the five years immediately preceding the filing of the application. Attached to the application were exhibits setting forth the amounts shown on the books of the company, as to earnings and expenditures for the year 1914 and for the first five months of 1915, and a detailed estimate of the amounts which the officials of the company consider necessary for operation of the system during the coming twelve months' period. There is also set forth a tabulation of the flat and meter rates now established by the ordinance of the town trustees of Hayward, which went into effect January 1, 1909, and remain unchanged, and the rates which the company desires to have established. The flat rates, or rates for unmetered use of water, now in effect are listed in fifty sections.

Ordinary domestic use rates are as follows:

Each family of 1 person	$0 65
Each family of 2 to 4 persons	1 25
Each family of 5 to 6 persons	1 55
Each family of 7 to 8 persons	1 90

There are the various additional charges customary with this form of rate, and higher charges monthly for use in schoolhouses, business places, offices, etc., in accordance with the usual empirical methods of varying such charges.

Rental, for fire hydrants on 6-inch mains, is placed at $4.00 per month, and on smaller mains at $2.75 per month. Meter rates are 30 cents per 100 cubic feet. Water used by the town of Hayward for sprinkling streets, etc., is paid for at the rate of 12½ cents per 700 gallons, the equivalent of 13⅜ cents per 100 cubic feet. The applicant requests an increase of approximately 58 per cent over the foregoing rates.

The rate for metered water asked by the applicant is 45 cents per 100 cubic feet.

In support of its application for an increase the company relied upon its statements of account and the estimate of its officials in the matter of maintenance and operation expense, and upon the Commission's Decision No. 2255, in the application of this company to issue stock. That decision uses $101,372.00 as the value of the property of this company, presuming the transfer then authorized to have been consummated. The amount properly to be received and set aside annually to meet necessary replacement expense is accepted by the company at the figure used by the Commission's engineers when

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testifying in Application No. 1175, and that amount, $3,565.00, will, therefore, be accepted herein.

Two items of value were questioned at the hearing in this application; the site of abandoned pumping plant, value $1,960.00 and unused service connections, valued at $1,209.00. It was developed in testimony that the former is used as a material yard, and that probably the company could not provide other facilities at a less cost, and that the services were installed at the request of the town authorities, preliminary to paving streets. Therefore, these items are properly to be allowed.

Attorney for applicant claimed that further allowance should be made as follows:

Going value	$6,000 00
Organization and legal expense	3,000 00
Working capital	3,000 00
Indebtedness of San Lorenzo Water Co., assumed	2,000 00
Total	$14,000 00

The indebtedness of the San Lorenzo Water Company can hardly be considered an addition to value, particularly as all property items were included in the estimates discussed in Decision No. 2255, before referred to. In the hearing of Application No. 1175, Mr. Dillman, engineer for the water company, claimed there should be a going concern value of $20,000.00. In the present application, going concern value of $6,000.00 is asked for. There have been decisions of courts which have recognized going value, and the latest decisions seem to favor valuing a utility as it is found without a specified separate finding as to going value—that is what I have endeavored to do in this case.

Organization and legal expense is, to a large extent, covered by the overhead allowances included in engineers' estimates. Working capital, however, to such an extent as it is found necessary to keep funds out of use, should be provided for, and will be given consideration in recommending rates to be established. It is to be noted that Exhibits A and B, attached to the application, show that on January 1, 1914, there was a cash balance of $43.20, on January 1, 1915, $91.90, and on June 1, 1915, $899.85. It, therefore, appears that $3,000.00 is somewhat is excess of the average working capital withheld from use by the company. I find the amount upon which the consumers of this utility should pay returns to be $110,000.00.

In the determination of reasonable maintenance and operation expense of this system the Commission has available the exhibits of applicant, before referred to, an analysis of operating expenses for

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years 1913 and 1914, and a statement of operating expenses and revenues for several years, including and preceding 1913, prepared by the Commission's auditing department, and the estimate of the Commission's hydraulic engineer. There is a considerable variance in the amounts set forth in the various statements of the actual past expenditures. The expense of 1913 was $15,053.00, and of 1914, $13,260.00, according to Mr. R. A. Pabst, who prepared one of the auditor's exhibits. The exhibits accompanying the application show the expense for 1914 to have been $14,255.00. In each of these the rental payment for the plant has been eliminated, as has, from the company's statement for 1914, account of back rent, amounting to $2,000.00, and back taxes, amounting to $449.00. Rental payment, or as Mr. Pabst classes it, lease of system and interest on deferred payments, is stated by him for 1913, $3,310.35, and for 1914, $3,310.46, while the company in its application states the payment for 1914 to have been $3,150.00. This, however, is of no importance as a measure of proper future returns, the property now having been transferred from the San Lorenzo Water Company to the Hayward Water Company.

The company's statement of expense for the first five months of 1915 totals $6,763.35, of which $1,312.50 is payment for "lease of other plant," leaving the comparable amount $5,450.85. The Commission's hydraulic engineer presented an estimate totaling $16,075.00, which he considered properly applicable should the company not change its form of rates from a flat to a metered basis, while the company claimed as the amount that should be allowed, $20,482.21. This, apparently, the company considered justified in part by its statement that disbursements in 1914 amounted to nearly an equal sum, but neglected to call attention to the fact set forth above, that the items of rent, back rent and back taxes, totaling $5,599.00 can not be considered the operating expense likely to recur each year under the present ownership. The estimate of the company being so greatly in excess of the actual expense that has been incurred in the past, makes it unnecessary to give it detailed consideration.

The greatest difference between this estimate and that of the Commission's engineers is in the matter of repairs and general expense. For repairs, in the estimate presented by Mr. R. W. Hawley for the Commission's engineering department, is allowed $1,000.00, while the company claimed $2,702.00. The average of several recent years is somewhat under $1,000.00, and it, therefore, seems unnecessary to provide any greater sum, particularly, if an allowance is made for an adequate depreciation fund. Mr. Hawley estimates $5,600.00 for general operating expense, as against $8,406.00, which the company states

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it requires. Comparable amounts expended in 1913 and 1914, respectively, are $2,550.00 and $4,048.00.

The company insists that it now must provide for:

President	$200 00 per month
Secretary	100 00 per month
Legal retainer	50 00 per month
Consulting engineer	100 00 per month

Mr. Hawley provides:

Manager and superintendent	$1,200 00 per annum
Legal and engineering retainers	1,200 00 per annum
Directors fees	150 00 per annum
Commercial expense	1,200 00 per annum

The last two items provided by Mr. Hawley are not provided for by the company in their estimate. With the limited operations of this company it does not seem necessary to provide for a separate office in San Francisco, as has been requested, and compared with the many other similar concerns, whose affairs have come before this Commission for consideration, it appears that the amounts provided for in maintenance and operation, by the Commission's engineers, are liberal.

An estimate was also presented purporting to show that if meters were installed on all services, the increased cost per annum would be $1,200.00, and the parallel decrease in cost, due to the reduction in the water pumped, would be $1,735.00. This reduction includes the reduction in force, by eliminating one man at the pumping plant. The company objected strenuously, and while admitting that the amount of water pumped would be decidedly decreased, and that great improvement in service would be gained thereby, refused to admit that there would be any less expense in operating the system.

Records in the testimony show that about 26,000,000 cubic feet of water was pumped during 1914, and the company does not attack the estimate of the Commission's engineer, that there will be a reduction in pumpage of some 11,000,000 cubic feet, or about 42 per cent reduction. It does not appear unreasonable to presume that one of the three men now employed would, under such conditions, be unnecessary, and that an estimated reduction of one-quarter the fuel and supplies and repairs at the pumping plant, is liberal to the utility.

It appears reasonable to presume that if rates are so established as to properly allow for operation of the system under present conditions, that the same rates would be adequate with meters installed, and the water actually paid for by measurement. It has been found that where water is pumped, or otherwise causes expense directly proportional to the amount consumed, that flat rates are entirely unjust and unsatisfactory. This is true as regards the relation of consumer and utility,

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but even more is it apparent as between the various consumers. The man who conserves the supply very possibly is being penalized instead of being rewarded.

Immediately preceding hearing in this matter, the complaint of the Town of Hayward against the San Lorenzo Water Company (Hayward Water Company), was given hearing, and reference to the decision in that matter is made hereby. It was clearly established in that proceeding that a number of consumers are often without water during the summer months, and that pressure and carrying capacity of the mains has been found at times inadequate for proper fire protection. The company claims that this is due to the excessive periodical use by the consumers when under no restraint. In the hearing of this application, the Hayward Water Company evinced, not only a desire, but the intention, of metering this system as rapidly as possible. In view of that fact, I shall recommend that the present flat rates remain in effect pending the metering of the system.

The records appear to show that there will necessarily be some increase in the aggregate returns to provide for the adequate service which will undoubtedly be demanded of this company, and I will endeavor to establish such a rate for measured water as will be just and equitable. The trial rate used by the Commission's engineers, and presented in testimony, applied upon the estimated total use of 15,000,000 cubic feet, apparently would provide a return of about $34,000.00, whereas $20,000.00 is sufficient to provide for maintenance and operation and depreciation. The remaining $14,000.00 at 7 per cent would provide an investment of $200,000.00. The rate herein established is somewhat lower, and applying this rate against the estimate in testimony of amounts of water that will be used, it seems assured that the gross annual return will be $30,000.00, approximately.

In the decision in Case No. 445, the Hayward Water Company is directed to make certain improvements in its installation and to install meters for its consumers with due diligence. It is thought that the installation of a 6-inch main pipe line on C street between Third and Fifth streets, and a 4-inch main pipe line on C street between Fifth and Sixth streets will correct the inefficiency in the service of the company now complained of, and the company is given sixty days within which time to make such installation. The rates herein provided will, therefore, become effective upon the completion of the installation of the 6-inch and the 4-inch mains on C street, as provided in the decision in Case 445, *supra*.

From the records and testimony, it appears that the company has in the past, and may reasonably have expected in the future, to realize a gross annual income of about $20,000.00. The company claims that

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this means an absolute deficit or failure to pay operating expenses. The Commission believes that some economies in operation, as set forth herein, may be put into effect and that with the metering of the system and the reduction of expenses suggested by the Commission herein, the rates herein provided will increase the annual income by about $10,000.00, which will enable it to pay operating expenses, provide a reasonable sum for depreciation and realize a fair return upon its investment of 8 per cent per annum.

Attention is called to the fact that this order provides for almost an entire change from a rate based upon the extent of the consumers' family, premises, buildings, etc., to a rate by measuring of the water used, and that, therefore, the result is problematic. If the rate be found to provide results deviating largely, there must, of course, be a future revision.

I recommend the following form of order:

ORDER.

Hayward Water Company having made application to increase its rates, and a public hearing having been conducted in the matter, and the Commission being fully informed in the premises, it is hereby found as a fact that the present rates are unjust and inequitable, and that the rates set forth in the following order are just and equitable rates, and basing this order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered that the rates to be charged by the Hayward Water Company shall be as follows:

General use—monthly.

Minimum payment for first 300 cu. ft	$1.00
Payment for use between 300 cu. ft. and 5,000 cu. ft.	.25 per 100 cu. ft.
Payment for all use in excess of 5,000 feet	.15 per 100 cu. ft.

Flat rates, as now legally established on file with the Commission.

Public use.

Street sprinkling and sewer flushing	$0.15 per 100 cu. ft.
Fire service—for number of hydrants in service July 1, 1914	200.00 per month
Additional hydrants	1.00 per month

All other public use at general rates.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of July, 1915.

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DECISION NO. 2644.

FRANK TURNBULL COMPANY

vs.

SWEETWATER WATER COMPANY.

Case No. 472.

Decided July 30, 1915.

The Commission having heretofore directed defendant to accept a conveyance of the water system of complainant and to continue serving the consumers thereon, decides upon further consideration that such order should be rescinded, in connection with which it is held: That the Commission has no power to compel a water company to take over and operate a system serving territory which the water company itself does not hold itself out as serving nor has ever attempted or is obligated to serve. That defendant company's supply of water is not sufficient to compel it to extend its mains into complainant's territory, which action would lay it open to serving considerable additional areas and as it is rendering as efficient service as possible at present under existing conditions, complaint dismissed.

Edgar A. Luce and *Harrison G. Sloan*, for Complainant.

Hunsaker & Britt, *A. H. Sweet* and *F. S. Jennings*, for Defendant.

Johnson W. Puterbaugh, for National City.

F. B. Andrews, for Chula Vista.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

OPINION ON APPLICATION FOR REHEARING.

This is an application for rehearing made by Sweetwater Water Company, defendant.

The Commission heretofore made its order to the effect that defendant, Sweetwater Water Company, accept the offer of Frank Turnbull Company to convey a small water distributing plant located near the city of San Diego, and after such conveyance said defendant was ordered to operate this plant and to accept and serve as its own consumers, the consumers located on the Turnbull system.

A hearing on this application was had, evidence was introduced and arguments made, and the matter is now submitted.

I joined in the order complained of, but upon more mature reflection and consideration of this case, I am convinced we should recede from the position taken therein and the commissioner who wrote the decision on the former application agrees with me in this position.

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I believe that the only power of the Commission in the premises is to order Sweetwater Water Company, defendant, to produce better wholesale service at the point of delivery into the pipes of the Turnbull company, or to extend its own system into the territory covered by the Turnbull company, and thereupon to serve the Turnbull consumers directly from its own system. I do not believe this Commission has power to compel defendant to accept a conveyance of the Turnbull system and thereupon to operate it.

The evidence makes it clear that defendant, Sweetwater Water Company, has never obligated itself to do more than to deliver water wholesale at a designated point into the pipes of the Turnbull company. In fact, the evidence shows that the defendant has, with great care, safeguarded itself against any claim that it had agreed to furnish the territory covered by the Turnbull system with water direct.

The service furnished the Turnbull company appears to be as good as is possible under all the circumstances, unless defendant were compelled to go to a very considerable expense by way of pumping or other device, to increase pressure at the point of delivery. If defendant were compelled to do this it would mean that a better service would be compelled to be given the Turnbull company than is provided for the direct consumers of defendant on other parts of its system. Therefore, I do not believe that the defendant should be ordered to improve this service.

To adopt the other alternative of ordering defendant to extend its system and service into the territory now served by the Turnbull company would open the way to immensely increase the territory to be served by defendant's plant, as there are many thousands of acres located as close or closer to defendant's system than the Turnbull company lands, and if extension be compelled to this property, no just reason could be given for refusing an extension to large amounts of other property.

When it is remembered that this Sweetwater system, according to the testimony in this and other matters before the Commission, is taxed by existing consumers and those who have the right to demand water from it almost to capacity, it does not seem just or safe at this time to order any extension of applicant's system.

The cities of National City and Chula Vista intervened in this proceeding at the hearing, and protested vigorously against any new consumers being taken on by defendant, Sweetwater Water Company, because it was insisted that new consumers would deplete or endanger the supply of present consumers.

The evidence shows that the consumers on the Turnbull system do not get good or adequate service, but I believe the full responsibility

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for this situation rests upon the Turnbull company. It laid out this tract of land, made its contract for the delivery of water wholesale with the defendant company, installed its own water distributing system and sold a part of its land to people who made their homes thereon, undoubtedly believing that the water supply would be adequate.

It will be possible for the Turnbull company, by the expenditure of a comparatively small sum of money, to erect a tank to provide a water supply for the people whom it has induced to locate on its lands, and this I believe to be its duty.

I recommend that the order heretofore made be annulled and the complaint herein be dismissed.

Herewith a form of order:

ORDER.

Complaint having been made by Frank Turnbull Company against Sweetwater Water Company and a hearing having been had on said complaint and an order thereafter made by this Commission, and thereafter application having been made for a rehearing in said matter and evidence having been introduced and argument made on said application for rehearing, and the matter being now submitted, and the Commission being fully apprised in the premises,

It is hereby ordered by the Railroad Commission of the State of California that the order heretofore made by this Commission on the 30th day of January, 1914, be and the same is hereby annulled, and the complaint in this proceeding is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of July, 1915.

Decision No. 2645, grade crossing; not printed. See end of volume.

DECISION NO. 2646.

IN THE MATTER OF THE APPLICATION OF CASTRO POINT RAILWAY AND TERMINAL COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CAPITAL STOCK.

Application No. 1721.

Decided July 31, 1915.

Applicant having consummated plans for the construction of a railroad from San Pablo quarries to a connection with the Richmond Belt Railway Company near Winehaven, has constructed at present approximately 1,000 feet of trackage,

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having secured advances from Blake Brothers quarries and San Francisco Quarries Company aggregating the sum of $39,473.18, for which it now desires to issue 890 shares of stock of the par value of $100.00 per share to be issued to the quarries or their officials at par in consideration for moneys advanced and for the purposes of finishing such construction. Intervenor objecting to the granting of this application, contends among other things, that applicant is not proceeding in good faith, but merely for the purpose of condemning certain wharfage property which it controls, and it appearing that though this road will probably not pay a return upon the investment for some time, it will be of considerable benefit to the quarries interested. Application granted, provided that none of such stock shall be issued until applicant shall have constructed a substantial unit of its proposed line which shall then be approved by the Commission under supplemental order determining the amount of stock to be issued therefor.

McCutchen, Olney and Willard, by *F. P. Griffiths,* for Applicant.

Reed, Nusbaumer and Bingaman, by *E. Nusbaumer,* for Richmond Wharf and Dock Company, Intervenor.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Castro Point Railway and Terminal Company for authority to issue 890 shares of capital stock of the par value of $100.00 per share, for the purpose of discharging certain outstanding indebtedness and to provide funds for the construction of railway facilities.

Applicant was incorporated under the laws of the State of California on August 26, 1911, for the purpose of constructing approximately two miles of railroad from a point near San Pablo quarry to a connection with the Richmond Belt Line Railway Company, near Winehaven. All of the above described route lies within the city limits of Richmond, Contra Costa County, which city, by Ordinance No. 255, adopted March 25, 1912, has granted the railway company a fifty-year franchise for the construction of its line.

At the present time the company has laid about 1,000 feet of track, which is now used by San Francisco-Oakland Terminal Railways to carry passengers to the ferry of the Richmond and San Rafael Ferry and Transportation Company, and to take shipments of rock from the quarry bunkers.

Applicant states that it has acquired all of the necessary right of way for its line, excepting a small piece of land which may not be needed in case the Richmond Belt Line Railway makes certain changes in its right of way.

Up to May 1, 1915, the applicant states that the total cost of its line was the sum of $50,123.46. It has an authorized capitalization of $100,000.00, divided into 1,000 shares of the par value of $100.00 per

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share, of which 110 shares are now outstanding. It has issued no bonds, notes or other evidence of indebtedness.

The purposes of the present issue are to repay Blake Brothers Company for advances in the sum of $18,403.07; to repay San Francisco Quarries Company for advances in the sum of $21,070.11; and to pay an obligation to its attorneys, McCutchen, Olney and Willard, in the sum of $490.00. The balance of the proceeds the company intends to use in repaying advances made subsequent to May 1, 1915, and to provide for new construction.

At the hearing of this application Richmond Wharf and Dock Company appeared in intervention, its interest arising from the fact that the railway company has acquired two parcels of land belonging to the Dock company under condemnation proceedings. An order in these proceedings was entered by the Superior Court of Contra Costa County on August 19, 1913, and the matter is now on appeal to the Supreme Court.

The principal point raised by the intervenors was that the railway company was not a public utility and that the Commission was, therefore, without jurisdiction. There is no merit in this contention.

Applicant states that it is the intention to issue the stock herein applied for to Blake Brothers Company, or to some individual member of the firm, and that it is their intention to hold this stock and not to resell the same to the public. The advances heretofore made for the railway have been by Blake Brothers Company or the San Francisco Quarries Company, which is controlled by Blake Brothers Company.

It is estimated that for the present, traffic will consist chiefly of rock shipments from the quarries controlled by Blake Brothers Company. At the present time such rock as is shipped from these quarries by rail passes over the lines of the San Francisco-Oakland Terminal Railways, and shipments are accordingly limited by the freight franchises of this company.

Applicant asserts that the contemplated connection with the Belt line will give it outlet over both the Southern Pacific and The Atchison, Topeka and Santa Fe railways. Applicant hopes that eventually new industries may be attracted to the section of the bay shore served by its lines and additional business result therefrom.

The present output of the quarries which the line will serve is approximately 180,000 yards a year. Witness for the applicant stated that this output would probably be increased fifty per cent with adequate railway connections.

At the hearing of the application of Castro Point Railway and Terminal Company for authority to enter into an agreement with Charles

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Van Damme for the use of a wharf (Application No. 1738), Richmond Wharf and Dock Company again asked for permission to protest against the issue of stock applied for in the application herein. It was thereupon stipulated that Richmond Wharf and Dock Company should be given an opportunity to present such additional evidence as it had to offer in the form of a written statement, to which Castro Point Railway and Terminal Company would be given an opportunity to reply. This statement and the reply thereto have been filed. Briefly, the arguments presented by Richmond Wharf and Dock Company are:

1. That this stock should not be sold to the public, as it has no assets behind it;
2. That Castro Point Railway and Terminal Company is not proceeding in good faith;
3. That no need exists for the proposed line of the Railway company;
4. That the amount of stock asked for would be insufficient to build said line;
5. That the road could never pay expenses;
6. That the San Pablo Quarry Company's business is adequately served by existing facilities; and
7. That the whole scheme of the Castro Point Railway and Terminal Company was launched for the purpose of acquiring certain property of Richmond Wharf and Dock Company.

In answer to this statement the Railway company replies:

1. That it is not the intention to sell this stock to the public and that Blake Brothers Company will consider the investment good by reason of added value to lands and in the increased facilities for quarry output;
2. That the Railway company has already demonstrated its good faith by laying 1,000 feet of track and doing considerable cutting and filling;
3. That the proceeds from the present issue will be sufficient to build a line to the proposed extension of the Belt Line railway;
4. That the promoters have frankly stated that they do not expect immediate dividends upon this stock at present;
5. That at the present time the quarry company can only ship by rail over the lines of the San Francisco-Oakland Terminal Railways; and
6. That the condemnation of the property of Richmond Wharf and Dock Company was only an incident in connection with its larger plans.

After a consideration of the evidence submitted by the applicant and after due consideration of the points raised by the intervenor, I am of the opinion that the application for issue of stock as herein requested should be granted. I believe, however, that Castro Point Railway and Terminal Company should first demonstrate that it will

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proceed with the construction of a serviceable line, and I shall accordingly make the issue of this stock dependent upon the completion of all or substantial units of the line which Castro Point Railway and Terminal Company proposes to build.

This will work no hardship upon the applicant if it proceeds with the construction of its railway in good faith, for the reason that all of the advances for the railway are being made by Blake Brothers Company, or the San Francisco Quarries Company, which is controlled by Blake Brothers Company.

The railway enterprise is to be controlled by Blake Brothers Company, and when the advances have been sufficient to enable the railway to complete a substantial unit, this Commission will issue its supplemental order, so that the railway may then issue to Blake Brothers Company enough stock at par to cover such advances.

I accordingly submit the following form of order:

ORDER.

Castro Point Railway and Terminal Company having applied to this Commission for authority to issue 890 shares of stock for the purposes hereinbefore set forth;

And it appearing to this Commission that the purposes for which applicant proposes to issue said stock are not reasonably chargeable in whole or in part to operating expenses, or to income,

It is hereby ordered that Castro Point Railway and Terminal Company be, and it is hereby, authorized to issue 890 shares of its capital stock of the par value of $100.00 per share, upon the following conditions, and not otherwise:

1. The stock herein authorized to be issued shall be sold by applicant at not less than its par value of $100.00 per share;

2. Before any of the stock herein authorized shall be issued, applicant shall present to this Commission satisfactory evidence that it has completed all, or a substantial unit, of its proposed line, and shall secure from this Commission a supplemental order approving the same, and determining the amount of stock to be issued;

3. The authority herein granted shall apply only to such stock as shall have been issued on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of July, 1915.

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DECISION NO. 2647.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE PAYMENT OF ADDITIONAL INTEREST ON OUTSTANDING BONDS, AND THE ISSUANCE OF CERTAIN ADDITIONAL BONDS.

Application No. 1516.

Decided July 31, 1915.

Applicant applies for and is authorized to pledge as security $205,000.00 face value of its first and refunding mortgage bonds heretofore authorized, covering an issue of $153,750.00 two-year promissory notes, which notes it is also authorized to issue at interest at not to exceed 8 per cent for the purpose of refunding promissory notes at present outstanding.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas this Commission on July 7, 1915 (Decision No. 2571), issued its first supplemental order in this proceeding, authorizing applicant to secure the payment of $809,000.00 face value of notes by pledging $1,080,000.00 face value, of its first and refunding mortgage bonds, being a portion of the bonds heretofore authorized to be issued in Decision No. 2335 of this Commission; and,

Whereas applicant, in a letter dated July 22, 1915, asks for authority to pledge all of its unsold first and refunding mortgage forty-year Series "C" 6 per cent bonds, or so many thereof as may be necessary, to secure its notes payable at the ratio of not exceeding $4,000.00 par value of said bonds for each $3,000.00 par value of notes so issued;

And good cause appearing,

It is hereby ordered that San Joaquin Light and Power Corporation be granted authority, and it is hereby granted authority, to pledge as collateral security $205,000.00 first and refunding mortgage forty-year Series "C" 6 per cent bonds, the issuance of which is authorized by Decision No. 2335, dated May 3, 1915, for an issue of promissory notes not exceeding a total of $153,750.00.

It is hereby further ordered that San Joaquin Light and Power Corporation be granted authority to issue its promissory notes in a total sum not to exceed $153,750.00, said notes to be secured by applicant's first mortgage forty-year Series "C" 6 per cent gold bonds, in such ratio that the face value of the notes issued, shall at no time be less than seventy-five per cent of the face value of the bonds pledged as collateral security therefor.

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The authority herein given to pledge said bonds, and to issue said notes is given upon the following conditions and not otherwise:

1. The notes herein authorized to be issued shall mature on or before two years from date of issue and shall bear a rate of interest which shall not exceed 8 per cent per annum.

2. Applicant shall report to this Commission on or before the tenth day of each month, the name of the payee of the notes issued during the preceding month, the term of the notes, the rate of interest, the face amount of each note issued, and the amount of bonds pledged as collateral to secure the payment of each note.

3. The proceeds to be obtained from the issuance of the notes herein authorized shall be used only for purposes specified in this Commission's Decision No. 2335, dated May 3, 1915.

4. The authority herein granted to pledge said bonds and to issue said notes shall apply to such bonds as shall have been pledged, and to such notes as shall have been issued, on or before April 1, 1916.

5. The authority herein granted is conditioned upon the payment of the fee prescribed in section 57 of the Public Utilities Act as amended.

It is hereby further ordered that the order in Decision No. 2335, dated May 3, 1915, and its amendments, shall remain in full force and effect except as they may be in conflict with this second supplemental order.

Dated at San Francisco, California, this 31st day of July, 1915.

DECISION NO. 2648.

IN THE MATTER OF THE APPLICATION OF IMPERIAL GRAIN AND WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE SALE OF ITS CAPITAL STOCK.

Application No. 1789.

Decided July 31, 1915.

Applicant applies for permission to issue 75 shares of its capital stock of the par value of $100.00 per share, proceeds of which are to be used for the purposes of constructing a new warehouse and repairs to present warehouses, and it appearing that the item of repairs is properly chargeable to maintenance and not to capital, applicant authorized to issue 65 shares of stock to be sold at not less than par; proceeds to be used for the purposes of enlarging present warehouse at Calipatria and building a new warehouse at Rockwood.

Albert M. Norton, for Applicant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of Imperial Grain and Warehouse Company for authority to issue 75 shares of its capital stock for the purpose of providing funds for additions and betterments, as hereinafter set forth.

At the present time applicant operates eight warehouses in the counties of Los Angeles, Imperial and Riverside. All of its outstanding capital stock, amounting to 419 shares out of a total authorized issue of 1,000 shares, is owned by Newmark Grain Company. The latter company formerly owned certain of the warehouses now operated by applicant. It sold its interests to Imperial Grain and Warehouse Company under an order of this Commission dated July 13, 1914.

The purposes for which applicant proposes to issue this stock are the rebuilding of a warehouse at El Centro, destroyed by earthquake; enlarging of warehouse at Calipatria, and building of warehouse at Rockwood, all in Imperial County. The estimated cost of these improvements is $6,000.00. The balance of the proceeds from the sale of stock applicant intends to apply to other improvements not yet fully determined upon.

Witness for applicant stated that proper warehouse facilities in Imperial County have been lacking, and that there is considerable demand on the part of farmers for the construction of new warehouses. The company states that it already has stock subscriptions to the extent of approximately $1,400.00 from the farmers on the Calipatria district and that it expects about an equal amount of subscriptions in the Rockwood district. The stock not sold to farmers will be taken by Newmark Grain Company.

Applicant's annual report to this Commission for the year ending December 31, 1914, shows that the company has no bonds or notes outstanding. Its net operating revenues for the same period amounted to $1,165.37 and since the report was rendered the company has declared a dividend of $2.75 on each share.

A summary of the company's balance sheet as of December 31, 1914, is as follows:

Assets:		
Property account	$41,893 24	
Due from Newmark Grain Company	1,172 11	
		$43,065 37
Liabilities:		
Capital stock	$41,900 00	
Undivided profits	1,165 37	
		$43,065 37

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Applicant represented that it will require approximately $1,000.00 to rebuild a warehouse at El Centro recently damaged by earthquake. As this is not a capital purpose for which stock ordinarily may be issued under the terms of the Public Utilities Act, I recommend that this portion of the application be denied without prejudice. The applicant may issue a note for less than one year for this purpose and at the end of the year's period may again bring this portion of the application to the attention of this Commission.

After a consideration of the evidence submitted by applicant I am of the opinion that the request is reasonable and should be granted to the extent hereinbefore set forth and I accordingly submit the following form of order:

ORDER.

Imperial Grain and Warehouse Company having applied to this Commission for authority to issue 75 shares of capital stock of the par value of $100.00 per share for the purposes hereinbefore set forth;

And it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which said stock is to be issued are not properly chargeable in whole or in part to operating expenses or to income, except as otherwise specified in the foregoing opinion,

It is hereby ordered that Imperial Grain and Warehouse Company be, and it is hereby, authorized to issue 65 shares of its capital stock upon the following conditions, and not otherwise:

1. The stock herein authorized shall be sold so as to net applicant not less than its par value of $100.00 per share;

2. The proceeds from the sale of this stock may be used in a sum not to exceed $5,000.00 for the purposes of enlarging warehouse at Calipatria and building a warehouse at Rockwood. Before any of the proceeds from the sale of this stock are used for any other purposes, applicant shall secure a supplemental order from this Commission approving such expenditures;

3. The applicant may accept partial payments for the stock to be issued, but such stock shall only be issued after the full par value shall have been received by applicant.

4. Imperial Grain and Warehouse Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

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5. The authority herein granted shall apply only to such stock as shall have been issued on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of July, 1915.

DECISION NO. 2649.

GEORGE B. MACGILLIVARY ET AL.

vs.

THE CORONA GAS AND ELECTRIC LIGHT COMPANY.

Case No. 737.

Decided July 31, 1915.

Complainants attack the electric rates of defendant company in the city of Corona. The present lighting rates are 10 cents per K. W. H. for first 100 K. W. H., 8 cents for next 100, 7 cents for next 100, and 6 cents for next 100, with a minimum monthly bill of $1.00. Cooking rates on special meter 4½ cents per K. W. H., minimum monthly bill $1.50. Defendant also has in effect a schedule of power rates including a rate of 7 cents per K. W. H. for first 100 K. W. H., and graduating to 2 cents per K. W. H. for amounts in excess of 2,000 K. W. H.

Held. After review of defendant's operating revenues and expenses and a check of the valuation submitted, that the present rates are not unjust nor exorbitant, complaint dismissed.

G. R. Freeman, for Complainant.

I. B. Potter, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is a complaint by George B. MacGillivary and other residents of the city of Corona against the rates for electric service in that community.

The complaint in this proceeding, filed on December 21, 1914, alleges in part that the rates charged by Corona Gas and Electric Light Company for electric service supplied by it to the inhabitants of the city of Corona are excessive, unjust, unreasonable and discriminatory, and the Commission is asked to establish proper rates for such service.

Defendant in its answer denies that the rates charged and collected by it in the city of Corona are excessive, unreasonable, or otherwise improper, and alleges, in effect, that its present earnings in the city of

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Corona are not sufficient to yield a reasonable return on the value of its properties in that city after making due and proper allowance for operating expenses and depreciation.

The rates for electric service in effect in the city of Corona prior to January 1, 1915, and which are alleged in the complaint to be excessive and discriminatory are as follows:

TABLE I.

Electric Rates Corona Gas and Electric Light Company, December 21, 1914.

A. Schedule for rates for lighting service, per month:

For the first 100 K. W. Hours, per month, per K. W. Hour ..... $.10
For the next 100 K. W. Hours, per month, per K. K. Hour ..... .08
For the next 100 K. W. Hours, per month, per K. W. Hour ..... .07
For the next 200 K. W. Hours, per month, per K. W. Hour ..... .06
All additional electrical energy used in excess of 500 K. W. Hours, at 5 cents per K. W. Hour.
Minimum charge per month, $1.00.
Provided, however, that when bills for electricity furnished for lighting purposes during the preceding month are not paid on or before the tenth day of the month in which such bills are rendered, then the said rates shall be as follows:
For the first 100 K. W. Hours, per month, per K. W. Hour ..... $.12
For the next 100 K. W. Hours, per month, per K. W. Hour ..... .10
For the next 100 K. W. Hours, per month, per K. W. Hour ..... .09
For the next 200 K. W. Hours, per month, per K. W. Hour ..... .08
Eight, 16 and 32 candle power carbon filament lamp renewals are to be furnished free by the person, firm or corporation supplying the electricity for light service upon receipt of the burned-out lamps, and these renewals are taken into consideration in the fixing of the above rates.

B. Schedule of rates for heating and cooking service, where a special meter is installed, per month, per K. W. Hour 4½ cents.
Minimum monthly bill $1.50.

C. Schedule of rates for power service per month.
Small motors—Block system:
First 100 K. W. Hours, per month, per K. W. Hour ..... $.07
Next 100 K. W. Hours, per month, per K. W. Hour ..... .06
Next 100 K. W. Hours, per month, per K. W. Hour ..... .05
Next 100 K. W. Hours, per month, per K. W. Hour ..... .04
Next 200 K. W. Hours, per month, per K. W. Hour ..... .03½
Next 400 K. W. Hours, per month, per K. W. Hour ..... .03
Next 1000 K. W. Hours, per month, per K. W. Hour ..... .02½
All energy used in excess of 2,000 K. W. Hours, per month, per K. W. Hour, 2 cents.
Monthly minimum $1.00 per H. P. per month connected load from 2 H. P. to and including 10 H. P.; for each additional horse power in excess of 10 horsepower, 50 cents per H. P. per month.

D. Rates for six months' power service.
Motors smaller than 15 H. P. at the rate of 3 cents per K. W. Hour.
Motors of 15 H. P. and over, at the rate of 2½ cents per K. W. Hour.
Provided that all power furnished under Class "D," the minimum rate shall be $15.00 per month for at least six months' time guaranteed. When a consumer agrees to a monthly minimum of $100.00 for six months in each year, at rate of 2 cents per K. W. Hour.

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Provided, however, that when bills for electricity furnished for power purposes under schedules "C" and "D" during the preceding month in which the bills are rendered, then 10 per cent of the bills shall be added to the amount of the bill.

E. Rates for yearly power:

Rates shall be the same as set forth in schedule "C" herein.
At the option of the consumer, he may contract to take power yearly.
The minimum charge shall be $12.00 per H. P. connected load per year.

Corona Gas and Electric Light Company was organized in July, 1903, with an authorized capitalization of $50,000.00. In September, 1903, contracts were awarded for steam and electrical equipment and for the laying of gas mains. During the month following, the company acquired a franchise in the city of Corona. In December, 1903, contracts were awarded for ice plant equipment, and the company engaged actively in this business for some time in addition to the supplying of gas and electricity in the city of Corona. During 1911 the stock of the Corona Gas and Electric Light Company was purchased by The Southern Sierras Power Company, and subsequently the gas plant and system was sold to the Southern California Gas Company, and the ice plant was leased to the National Ice Company at an annual rental of $1,000.00. At the present time Corona Gas and Electric Light Company is engaged only in the business of distributing electrical energy purchased from Pacific Light and Power Corporation under the terms of a contract which expires on March 30, 1916.

The estimated cost new and the estimated present value, depreciated on the straight line basis, of the electric properties of the Corona Gas and Electric Light Company, as shown by an appraisal report prepared by H. P. Gillette on March 31, 1914, are shown in the following table:

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TABLE II.

Estimated Cost New and Estimated Present Value Corona Gas and Elecrtic Light Company, March 31, 1914.

Classification	Cost new	Present value
Organization	$3,180 00	$3,180 00
Franchise	650 00	546 00
Land	1,000 00	1,000 60
Poles and fixtures	14,052 00	8,647 00
Wire	7,097 00	6,387 00
Insulators	474 00	474 00
Terra cotta building	6,426 00	5,398 00
Fencing (board)	126 00	118 00
Guard pipe railing	256 00	174 00
Sub-station equipment	6,150 00	4,920 00
Miscellaneous equipment	413 00	207 00
Line transformers and devices	3,193 00	2,129 00
Electric services	3,858 00	2,893 00
Meters	9,685 00	6,457 00
Wire	1,391 00	1,252 00
Lamps and fixtures	2,101 00	1,226 00
Office equipment	383 00	332 00
Store equipment	150 00	130 00
Engineering and superintendence	2,301 00	2,013 00
Law expense	500 00	437 00
Miscellaneous construction expenditure	2,000 00	1,750 00
Interest during construction	2,615 00	2,615 00
Total (fixed capital)	$68,001 00	$52,290 00
Cash and deposits	4,000 00	4,000 00
Ice plant	3,122 00	1,561 00
Material and supplies	3,380 00	3,380 00
Unamortized discount on securities	3,400 00	3,060 00
Other suspense—A	25,000 00	25,000 00
Other suspense—B	----------	10,813 00
Grand total	$106,908 00	$100,094 00

The cost of service in Corona for the year 1914 has been analyzed by defendant as follows:

TABLE III.

Cost of Service as Reported by Corona Gas and Electric Light Company Year 1914.

	Dec. 31, 1914.
Investment	$94,241 73
Fair return 10 per cent	9,424 17
Depreciation	1,800 00
Production expense	6,851 62
Distribution expense	3,213 13
Commercial expense	3,377 90
General expense (including taxes, etc.)	5,518 48
Total cost	$30,185 30
Operating revenue	24,052 69
Net loss	$ 6,132 61
Cost per K. W. H.	.09190506
Revenue per K. W. H.	.07323313
Net loss per K. W. H.	.01867193

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On January 1, 1915, Corona Gas and Electric Light Company voluntarily reduced its rates for electric energy in the city of Corona to those rates and charges shown in the following table:

TABLE IV.

Rates for Electric Service, City of Corona, Effective January 1, 1915.

Electric Lighting:

For the first 100 K. W. Hours, per month, per K. W. Hour	$.10
For the next 100 K. W. Hours, per month, per K. W. Hour	.08
For the next 100 K. W. Hours, per month, per K. W. Hour	.07
For the next 200 K. W. Hours, per month, per K. W. Hour	.06
All over 500 K. W. Hours, per month, per K. W. Hour	.05

Monthly minimum charge $1.00.

Prompt Payment Discount:

When bills accruing under this schedule are paid on or before the 12th of the month following that in which the service is rendered, a discount of 10 per cent will be allowed from the bill, except that no discount will be made from minimum charges.

Electric Heating and Cooking:

Rate, per K. W. Hour	$ .04
Minimum monthly charge	1.50

Electric Power:

For the first 100 K. W. Hours, per month, per K. W. Hour	$.07
For the next 100 K. W. Hours, per month, per K. W. Hour	.06
For the next 100 K. W. Hours, per month, per K. W. Hour	.05
For the next 100 K. W. Hours, per month, per K. W. Hour	.04
For the next 200 K. W. Hours, per month, per K. W. Hour	.03½
For the next 400 K. W. Hours, per month, per K. W. Hour	.03
For the next 1000 K. W. Hours, per month, per K. W. Hour	.02½
In excess of 2000 K. W. Hours, per month, per K. W. Hour	.02

Minimum: $1.00 per month per horsepower of consumer's motors installed, up to 10 horsepower. In excess of 10 horsepower, at 50 cents per month per horsepower of consumer's motors installed.

Lowest monthly minimum charge, $2.00.

After a careful investigation of the investment of defendant, and disregarding entirely all intangible values claimed by defendant, it is apparent that the revenues received from the city of Corona under the present operating conditions will not yield more than a reasonable return upon the value of the property of Corona Gas and Electric Light Company used and useful for, or in connection with, the furnishing of electric service to the inhabitants of that community.

In view of the facts as stated above, I find as a fact that the city of Corona and the inhabitants thereof have no just cause for complaint, and I accordingly recommend that the complaint be dismissed without prejudice.

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I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the same having been submitted and being now ready for decision,

It is hereby ordered that the complaint in the above entitled proceeding be, and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of July, 1915.

DECISION NO. 2650.

IN THE MATTER OF THE APPLICATION OF MT. WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL MORTGAGE TO BANKERS TRUST COMPANY, TRUSTEE.

Application No. 1811.

Decided August 2, 1915.

Applicant having recently acquired by purchase the property of the Tulare County Power Company, applies for and is granted permission to execute a supplemental mortgage including such property as additional security.

REPORT OF THE COMMISSION.

In this application Mt. Whitney Power and Electric Company asks for authority to execute to the Bankers Trust Company, Trustee, a supplemental mortgage similar in substance to the copy attached to this application and marked Exhibit "A".

By an order dated July 23, 1915 (Decision No. 2629), this Commission authorized Tulare County Power Company to transfer to Mt. Whitney Power and Electric Company all of its property.

On October 1, 1909, Mt. Whitney Power and Electric Company executed to Bankers Trust Company, Trustee, a mortgage securing the payment of $5,000,000.00 face value of 6 per cent sinking fund thirty-year gold bonds. The lien of the mortgage attaches to all of the property of the company owned on October 1, 1909, or thereafter acquired. However, the Bankers Trust Company, Trustee, has requested Mt. Whitney Power and Electric Company to execute a supplemental mortgage conveying to said Bankers Trust Company, Trustee, as addi-

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tional security, the property recently acquired from Tulare County Power Company.

The supplemental mortgage which applicant desires to execute to Bankers Trust Company, Trustee, describes the property acquired from Tulare County Power Company.

ORDER.

Mt. Whitney Power and Electric Company having applied to this Commission for an order authorizing it to execute to Bankers Trust Company, Trustee, a supplemental mortgage, substantially in the form of Exhibit "A," attached to this application, and the Commission being of the opinion that said application be granted,

It is hereby ordered that Mt. Whitney Power and Electric Company be given, and it is hereby given, authority to execute to Bankers Trust Company, Trustee, a supplemental mortgage substantially in the form of Exhibit "A," attached to this application, conveying the property acquired from Tulare County Power Company.

Dated at San Francisco, California, this 2d day of August, 1915.

DECISION NO. 2651.

IN THE MATTER OF THE APPLICATION OF SUGAR PINE RAILWAY COMPANY FOR AN ORDER AUTHORIZING SAID COMPANY TO BORROW MONEY.

Application No. 1809.

Decided August 2, 1915.

Applicant applies for and is granted permission to issue promissory note or notes of a total sum not to exceed $33,197.63 with interest at not to exceed 7 per cent, such notes to be issued at their face value for the purposes of paying off indebtedness due Sierra Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Sugar Pine Railway Company having applied to this Commission for authority to issue its promissory note or notes of the total sum of $33,197.63 for a period not exceeding two years from date, with interest not exceeding 7 per cent per annum; said note or notes to be payable to R. D. Robbins, who owns the controlling interest in said railway; the money to be realized from said note or notes to be used to pay off an open account due Sierra Railway Company of California,

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And a hearing having been held and it appearing to this Commission that the purposes for which it is proposed to issue said note or notes are proper purposes under the terms of the Public Utilities Act,

It is hereby ordered that Sugar Pine Railway Company be granted authority and it is hereby granted authority to issue its promissory note or notes in a total sum of $33,197.63, said note or notes to be payable to R. D. Robbins, to mature not exceeding two years from date and to bear interest not to exceed 7 per cent per annum.

The authority herein given is granted upon the following conditions and not otherwise:

1. The proceeds from the note or notes herein authorized to be issued shall be used to pay off applicant's indebtedness to Sierra Railway Company of California in the sum of $33,197.63.

2. Applicant shall realize from said note or notes the face value thereof plus accrued interest thereon.

3. Within thirty days after the note or notes herein authorized to be issued shall have been issued, applicant shall report such issue to this Commission with the date of issue, number of note or notes issued, rate of interest, and the face value of each note.

4. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

5. The authority herein granted shall apply to such note or notes as shall have been issued on or before December 31, 1915.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of August, 1915.

DECISION NO. 2652.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR AN ORDER PRELIMINARY TO THE ISSUE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE EXERCISE OF CERTAIN RIGHTS UNDER A FRANCHISE TO BE HEREAFTER GRANTED BY THE COUNTY OF PLUMAS, AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A CERTAIN ELECTRIC POWER LINE IN SAID COUNTY OF PLUMAS.

Application No. 1767.

Decided August 2, 1915.

Applicant applies for an order, preliminary to the issuance of a certificate of public convenience and necessity, authorizing the construction of a transmission line to serve the Engels Copper Mining Company in accordance with a franchise

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which it proposes acquiring from the county of Plumas. Plumas Light and Power Company objects to the granting of such application contending that the Copper company is properly within their territory and, though admitting that their plant is at present operating at full capacity, they intend to enlarge same so as to take care of this additional business.

Held, That as this Commission has heretofore denied the application of the Plumas company to issue bonds, owing to the litigation pending with reference to its title to water rights, it is in no position at the present time to proceed with construction work necessary to supply the demands of the Copper company, also that this Commission can not be expected to protect utilities in their particular field if they are unable or have not the facilities to render efficient service. Applicant granted a preliminary certificate, authorizing the construction of a transmission line to serve the Copper company with electric energy, in accordance with a franchise to be granted by the county of Plumas, provided that it shall not serve any additional consumers in this county, other than the Copper company without a further order of the Commission.

Chaffee Hall, for Great Western Power Company.

Curtiss Hillyer, for Plumas Light and Power Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner*.

This is an application by Great Western Power Company for an order preliminary to the issue of a certificate of public convenience and necessity for the exercise of certain rights under a franchise to be hereafter granted by the county of Plumas, and for a certificate of public convenience and necessity for the construction of an electric power line in Plumas County.

This is an application in effect for a preliminary order, authorizing Great Western Power Company to construct a 22,000-volt transmission line from Big Meadows to Engels Copper Mining Company mine in Plumas County, and for authority to sell electric energy to Engels Copper Mining Company, under a franchise to be hereafter granted by Plumas County.

In 1911 applicant constructed a hydroelectric plant with an installed capacity of 800 horsepower at Butte Valley, Plumas County. The capacity of the plant may be increased to 1,500 horsepower. The plant was constructed to generate electric energy used in connection with the construction of the dam at Big Meadows. Between the dam and the Butte Valley plant, a distance of six miles, applicant has constructed a three-phase transmission line. Since the completion of the Big Meadows dam the Butte Valley plant has not been operated, except for the purpose of lighting a few dwellings at the dam. It is now proposed to operate this plant and sell the electric energy to Engels Copper Mining Company, according to the terms of a contract dated July 1, 1915.

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Great Western Power Company has no transmission line between the Big Meadows dam and the mine owned by Engels Copper Mining Company. The distance between the two is approximately thirty miles. The cost of constructing the line is estimated at $40,000.00.

Under the terms of the contract dated July 1, 1915, Great Western Power Company has forty days within which to complete the line.

Engels Copper Mining Company has agreed to purchase and pay for a minimum of 450 horsepower. The Power company has given an option to the Mining company to purchase an additional 600 horsepower on or before January 1, 1916. Upon giving 90 days' notice, the Power company agrees to supply the Mining company with a maximum of 1,500 horsepower.

On July 7, 1915, Great Western Power Company applied to the Board of Supervisors of Plumas County for a franchise to construct, operate and maintain electrical transmission and distribution lines along and across the public highways of Plumas County. The franchise applied for is to be sold to the highest bidder on September 8, 1915. It is, of course, apparent that until applicant has obtained a franchise, no final order can be issued in this proceeding. Moreover, any order which may be issued at this time is only preliminary and conditioned upon the approval of the franchise to be obtained by Great Western Power Company from Plumas County.

The granting of this application is opposed by Plumas Light and Power Company. This company owns a 40-horsepower electric plant located at Greenville. It serves the towns of Greenville, Crescent Mills, Taylorsville, the Indian School and some of the intervening territory, all in Plumas County. Its plant is at present operated at its full capacity.

Plumas Light and Power Company proposes to enlarge its plant. In its report, marked Exhibit "A," it reports the cost of installing a 750-horsepower plant at $49,120.17. The cost of installing this plant includes the cost of a 13,200 volt transmission line from the proposed power plant to the mine of Engels Copper Mining Company. Engineer for protestant estimated that it would require three months, after the delivery of the material, to construct the plant. Applicant, on the other hand, reports that it can construct the proposed transmission line within thirty days. A representative of the Engels Copper Mining Company testified that it employed 150 men; that its needs for power were urgent, and that unless it could be secured within a short time, the company would have to enlarge its steam or gas engine plant.

It is important in this proceeding to consider the position of Plumas Light and Power Company. This company and its predecessor, Indian

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Valley Light and Power Company, has at various times appeared before the Commission for authority to issue stocks and bonds.

On March 3, 1915, this Commission in Decision No. 2192 denied without prejudice the application of Plumas Light and Power Company for authority to issue $52,000.00 face value of bonds. In passing on this application, the Commission said:

> There are two elements in this general situation, which appear to render it unwise to authorize at this time the bond issue as applied for. The first difficulty is the pending litigation over the water rights claimed by Round Valley Water Company. The lease of Plumas Light and Power Company of these properties gives it the option of purchase, but I believe it of doubtful wisdom for this applicant to proceed with the construction of a hydroelectric plant, with titles in controversy, as in this instance, and particularly, when we are informed that a decision may soon be expected in this matter. The second element in this situation to which I have referred, relates to the determination of which is the more feasible of two plans for the Plumas Light and Power Company to pursue. It may, as it here proposes, construct its own hydroelectric plant and serve the territory which it has mapped out for itself. It may be possible also for this company to construct a transmission line from Greenville to Big Meadows, as it proposed in Application No. 1136, to connect with the Great Western Power Company. From the evidence at hand, I am not satisfied that the plan herein proposed is the more practical and beneficial from all points of view.

Plumas Light and Power Company reports that the litigation referred to in the former opinion of the Commission had been decided in favor of Mr. Bidwell of Round Valley Water Company, but that a motion for a new trial has been filed. Both plaintiff and defendant have agreed to dismiss the litigation, provided this application of Great Western Power Company is denied. The litigation being adjusted, protestant hopes to find a ready market for its bonds if authorized by this Commission. Assuming that such were the case, it would require several weeks before the protestant could begin construction work upon its proposed 750 horsepower plant.

According to the contract between Great Western Power Company and Engels Copper Mining Company, the latter has agreed to pay for a minimum of 450 horsepower. The power company has obligated itself to furnish a maximum of 1,500 horsepower. Assuming that protestant were able to finance the construction of its proposed plant, it is by no means certain that the plant would have a sufficiently large installation to furnish the power required by Engels Copper Mining Company, the towns of Taylorsville, Crescent Mills, Greenville and adjacent territory, including Indian Valley. It is, of course, self-evident that a public

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utility can not expect this Commission to protect it in its territory, unless such public utility can demonstrate that it is or will be able to give adequate and sufficient service at reasonable rates to that territory.

I find no logical reason why Great Western Power Company should not be permitted to construct the proposed transmission line and sell electric energy to Engels Copper Mining Company. Before supplying any other consumer in Plumas County with electric energy, Great Western Power Company shall obtain a supplemental order from this Commission.

In this proceeding, Great Western Power Company has asked for authority merely to serve Engels Copper Mining Company. The approval herein given, therefore, has in contemplation a final order which would permit Great Western Power Company to sell electric energy, under the terms of the proposed Plumas County franchise, to the Engels Copper Mining Company only. If Great Western Power Company should subsequently desire to take on additional consumers in Plumas County, it will be necessary to make a separate application therefor. The effect, therefore, as far as this proceeding is concerned, will be a preliminary order granting authority to Great Western Power Company to serve Engels Copper Mining Company. This portion of Plumas County is not now served by Plumas Light and Power Company.

I herewith submit the following order:

ORDER.

Great Western Power Company having applied to this Commission for a preliminary order authorizing it to construct a transmission line from its Big Meadows dam to the mine of Engels Copper Mining Company, both located in Plumas County, and for an order permitting it to sell electric energy to said Engels Copper Mining Company under the terms of a franchise to be hereafter granted by Plumas County, and a public hearing having been held and it appearing that public convenience and necessity will require the exercise of rights and privileges under a franchise which has been applied for but not yet secured from the Board of Supervisors of Plumas County, a copy of the proposed franchise being attached to the application in this proceeding and marked Exhibit "A," under such conditions as may hereafter be specified,

It is hereby found as a fact that public convenience and necessity will require the exercise by Great Western Power Company of franchise rights for the construction and operation of a power line and the sale of electric light and power to be hereafter granted by the county of Plumas, upon such conditions as may hereafter be specified by this Commission.

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It is hereby ordered that a certificate of public convenience and necessity shall be granted to Great Western Power Company for the construction and operation of an electrical power line and the sale of electric light and power in Plumas County under a franchise to be hereafter granted by Plumas County; said certificate of public convenience and necessity to be issued after Great Western Power Company shall have acquired said franchise, as aforesaid, from Plumas County; and said certificate of public convenience and necessity to be issued upon such terms and conditions as this Commission may designate after Great Western Power Company shall have obtained said franchise from Plumas County.

It is further ordered that Great Western Power Company be granted authority, and it is hereby granted authority, to construct the proposed electrical power line from Big Meadows to the mine of the Engels Copper Mining Company, Plumas County, referred to in Exhibit "C," attached to this application, under a franchise to be granted by Plumas County, and on such terms and conditions as may hereafter be specified by this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of August, 1915.

DECISION NO. 2653.

SECURITY INVESTMENT COMPANY

vs.

PALERMO LAND AND WATER COMPANY.

Case No. 627.

Decided August 2, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

We have given careful consideration to the petition for rehearing filed herein by Palermo Land and Water Company, and find no occasion for reaching conclusions different from those expressed in the decision herein.

The petition refers to a number of matters as to which petitioner states that the Commission did not instruct the company in its decision

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herein. These are all matters outside of the issue presented herein and are not properly the subject of a decision in this proceeding. If petitioner desires the Commission's views with reference to these matters, and will write a letter to the Commission or take up the matter verbally, we shall be very glad to indicate our views.

ORDER ON PETITION FOR REHEARING.

Palermo Land and Water Company having filed a petition for rehearing herein, and careful consideration having been given to the same, and no good reason appearing why a rehearing should be had,

It is hereby ordered that said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 2d day of August, 1915.

DECISION NO. 2654.

IN THE MATTER OF THE APPLICATION OF THE SAN JOSE WATER COMPANY FOR AN INCREASE IN THE WATER RATES TO BE CHARGED THE TOWN OF LOS GATOS AND THE INHABITANTS THEREOF.

Application No. 1414.

Decided August 2, 1915.

Applicant, San Jose Water Company, applies for permission to establish for the town of Los Gatos and inhabitants a schedule of rates similar to the schedule established by the Commission for the city of San Jose. Applicant's present domestic rates are $1.00 minimum, entitling consumer to 4,000 gallons with a charge of 15 cents per 1,000 gallons for excess. It proposes to establish a rate of 90 cents minimum, entitling consumer to 4,000 gallons with a charge of 20 cents per 1,000 gallons between 4,000 and 10,000, 15 cents per 1,000 gallons between 10,000 and 100,000, and 12 cents per 1,000 gallons in excess of 100,000. These proposed domestic rates would effect only a very slight increase over the present schedule. Applicant also proposes to establish rates for hydrant service embodying increases amounting to 440 per cent over existing rates.

Held, As regards the domestic rates proposed by applicant, such schedule is just and reasonable and is established to become effective in Los Gatos and all other territory served by applicant, excepting such portions as to which the rates have already been established by the Commission. As regards the hydrant rates proposed: That no consumer can be expected to pay rates in excess of what the service is reasonably worth; that the service rendered in the town of Los Gatos for fire protection can not be classed on the same basis as fire protection in a city of much larger population, such as San Jose. Rate of $1.75 per hydrant per month established, these rates to include all meters to be paid for and set up and all extensions to property lines made, at the expense of the company.

S. F. Leib, for Applicant.

D. T. Jenkins, for Town of Los Gatos.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Applicant, San Jose Water Company, supplies water to the city of San Jose, towns of Los Gatos and Saratoga, their suburbs and adjacent territory, and to the inhabitants thereof. Applicant desires permission to establish and put into effect, in the town of Los Gatos, the same rates for water as were fixed by this Commission for the city of San Jose, Decision No. 1534, Case No. 476, *Thomas Monahan, as mayor of the city of San Jose*, vs. *San Jose Water Company*, decided May 22, 1914.

On April 13, 1914, the town of Los Gatos turned over to this Commission its powers over public utilities, the authority to fix rates to be charged by applicant within the corporate limits of the town prior to this time resting in the board of trustees, and on November 14, 1914, applicant filed its present petition, alleging that the rates now in force in Los Gatos are unreasonable, unjust and insufficient, in that they fail to provide sufficient revenue to earn a fair return on the capital investment, used, useful and necessary in supplying the town of Los Gatos, and residents thereof.

Hearings were held on March 5, and on May 4, 1915, the time intervening between these hearings being desired for a more complete investigation by the Commission's representatives. At these hearings Mr. D. T. Jenkins appeared in behalf of the town of Los Gatos, in protest against such of the proposed rates as applied to the town of Los Gatos. Applicant has filed its closing brief, and the matters are now before me for final determination.

In the decision in Case No. 476, the Commission left undisturbed the flat rates then existing in the city of San Jose. The flat rates now in force in Los Gatos are practically identical with those now operative in San Jose. The effect of this present application upon the flat rates will be immaterial, particularly when applicant's records show that at the present time only about 2.28 per cent of the total number of consumers in the entire Los Gatos district are flat rate users. For these reasons I shall recommend that applicant be allowed to put into effect in Los Gatos the flat rates now operative in San Jose.

Exclusive of the flat rates heretofore mentioned, the following tabulation shows applicant's present and proposed rates for the town of Los Gatos:

Present Rates.

For all water used by meter, monthly minimum charge for 4,000 gallons or less, one (1) dollar.

All above 4,000 gallons, at the rate of fifteen (15) cents per thousand gallons.

For water used from hydrants for fire purposes, by the town of Los Gatos, for each hydrant per annum, payable quarterly, five (5) dollars.

For water used for flushing sewers and street sprinkling, by the town of Los Gatos, eight (8) cents per thousand gallons.

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Proposed Rates.

Commercial.

Monthly minimum for 4,000 gallons or less, ninety (90) cents.

Between 4,000 and 10,000 gallons, twenty (20) cents for each thousand gallons.

Between 10,000 and 100,000 gallons, fifteen (15) cents for each thousand gallons.

Above 100,000 gallons, twelve (12) cents for each thousand gallons.

Municipal and County.

Schools, city hall and other governmental department buildings at commercial rates.

Fire hydrants, owned by town, per month.....$1 75

Fire hydrants, owned by company, per month..... 2 25

Parks and lawns, each meter minimum monthly..... 90

All water used, twelve (12) cents per thousand gallons.

Sprinkling measured by tanks and records by town, twelve (12) cents per thousand gallons.

Sewer flushing, each meter minimum monthly.....$ 90

All water used, twelve (12) cents per thousand gallons.

Applicant makes no mention of the further order in Case No. 476, relating to practices as identified with rates. It was further ordered in this case, that:

> "All meters to be paid for and set up at the expense of the company.
> All extensions to property line to be made at the expense of the company."

These matters are so closely allied with the rates fixed in the city of San Jose, that I shall recommend their adoption in this application.

The changes desired in commercial or domestic rates are very slight. Mr. Ryland, President, San Jose Water Company, estimated that the application of the proposed domestic rates would not result in a difference of more than $300.00 in the gross annual revenue. No objection is made to these proposed domestic rates by any of the applicant's present consumers. They now apply to the greater portion of applicant's system, and for the sake of uniform accounting, I shall recommend that the proposed commercial and domestic rates be allowed to be put into effect.

This leaves for consideration only the rates applicant desires to apply to the town of Los Gatos itself, but before proceeding to a discussion of the issues involved, I shall refer to certain references contained in applicant's final brief, wherein unlimited confidence in the integrity and ability of its officers is expressed. Lieutenant Governor John M. Eshleman, who, as president of the Railroad Commission of California heard and decided the issues in Case No. 476, expressed a like confidence, and I should be doing violence to my honest convictions if I did not at this time express hearty approval of the probity of these gentlemen, and, were that the only question comprehended in this case, a decision would be easy and a source of great satisfaction to myself.

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In this connection, I desire to express the same degree of confidence in the engineers of this Commission, who have assisted in case at bar, and in Case No. 476, *supra*, as well as in the able and gentlemanly counsel appearing therein. Such confidence seems entirely justified, and I may say that in the case of our engineers, it is born of long experience of the close relationship in the work of this Commission. As was the case with Lieutenant Governor Eshleman, the fact remains that in the final disposition in this case I may feel difficulty in accepting the findings of experts.

I will now discuss the protests entered by the town of Los Gatos. Objection is made to the proposed municipal rates, on the grounds that it is unable to pay an increased rate; that the fire service rendered by applicant is not such as to warrant any material increase over the existing rates, and that applicant is now receiving an adequate return on its investment over the entire territory served by it. In support of these contentions considerable testimony was taken. I will now take up these objections in the order in which they have been mentioned.

That rates are directly affected by the ability of the rate payer to meet them is patent to everyone. On this point I desire to refer to the words of President Max Thelen, in his opinion preceding this Commission's decision in Case No. 597, *W. J. Rogers and Central Pacific Land and Lumber Company* vs. *Sacramento Valley West Side Canal Company and William F. Fowler,* receiver of the property of Sacramento Valley West Side Canal Company, and Case No. 673, *Sacramento Valley Realty Company et al* vs. *Sacramento Valley West Side Canal Company and William F. Fowler,* receiver of the property of Sacramento Valley West Side Canal Company, decided June 14, 1915:

> "Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well-established principle of public utility regulation that whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public."

Also quoting in authority therefor the opinion of Justice Harlan, in *Covington & L. Turnpike Road Co.* vs. *Sanford,* 164 U. S. 578:

> "The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

And again:

> "If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public."

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And in case of *Smythe* vs. *Ames*, 169 U. S. 464:

> "What the Company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

The conclusions reached by Commissioner Thelen seem to me not only to be sound law, but good common sense. However, the ability or inability of the consumer to pay is most elusive and difficult of determination, and in my opinion should not be invoked in the determination of a utility's rates, unless the evidence sustaining it clearly indicates the fact. In this particular case, beyond a statement submitted by the town of Los Gatos, showing that revenues derived from the tax levy have already been apportioned, there is nothing in the evidence to show an inability to pay. Not only might it well be that the apportionment of these revenues could have been adjusted to meet any exigencies that might arise, but I can not bring myself to believe that a community with the standing and prosperity of this one is unable to meet any and all of its legitimate bills.

Of the rates to be charged the town of Los Gatos, it is in those for fire hydrant service that the greatest increase is proposed. There are now 60 hydrants installed, all the property of the water company. Under the present rates the annual rental on these hydrants is $300.00, while under the proposed rates it would be $1,620.00, an increase of 440 per cent, greater than the town now pays for water for all purposes. Mr. Jenkins, for the town of Los Gatos, drew particular attention to the present hydrant rates in San Jose, as compared with those in Los Gatos, and considerable testimony as to the relative quality of fire hydrant service rendered by applicant in the two communities. It is a well-established principle that rates to be charged must in no event be higher than the service is reasonably worth, and it necessarily follows that the quality of this service, as distinguished from its cost, is a determining factor in these rates. If we assume that the fire hydrant rentals fixed by this Commission for the city of San Jose, on May 22, 1914, are still just and reasonable rates, and there is nothing to show that the lapse of this short time has made them otherwise, I am led to believe, after a careful study of the evidence, that the application of the San Jose hydrant rates to the town of Los Gatos will result in a rate higher than the service is reasonably worth to the public.

In the ultimate conclusion, however, it is not possible to fix the exact relative difference in the quality of this service as rendered in the two communities, or a rate based upon any such difference; neither can I

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bring myself to believe that applicant seriously contends that its fire hydrant service in San Jose is not superior to that in Los Gatos. For these reasons, and for others which will hereinafter appear, necessity of discussing this question in detail is not evident, though I do desire to call attention to a conclusion, which, based upon even a general understanding of the distinction between the districts served, seems logical. That the extent and value of the property protected per hydrant is greater, and that applicant's mains, pumping equipment and other facilities for rendering fire service are larger and more efficient in a city of the size and character of San Jose than in a residence town so situated as Los Gatos is not only a reasonable conclusion, but one which seems fully verified by the evidence in both this and the former case.

I will now take up the last of the objections raised. Applicant's 1914 annual report on file with this Commission shows that its business as a whole is in a prosperous condition, although statements submitted by applicant tend to show that its Los Gatos territory is at present unprofitable. Obviously, rates are not based on the cost of service to each individual consumer, or group of consumers, but are based rather upon the cost of serving all consumers, and while it is admitted that applicant's business, when considered as a whole, can not be conducted at a loss, it does not necessarily follow that investments to serve any consumer, or group of consumers, will or should show the same percentage of profit.

I have indicated most of the elements affecting this particular case and ulterior to the fundamental rules governing courts and commissions in the fixing of public utility rates, and will now proceed to a discussion of the questions directly involved in the application of these fundamental rules. The general principles involved seem so well established that it is unnecessary to repeat them. The authorities are practically in agreement that just and reasonable rates are fundamentally based upon the gross amount which will pay proper operating expenses and give a fair return, together with loss by depreciation thereon, on the fair value of the property used and useful for the public service.

The sum of $8,833.00 has been arrived at by both applicant and this Commission's engineers, as a proper annual allowance for operation and maintenance expenses for the year 1915, and I can see no reason to differ from this estimate. I have referred to the fundamental principles involved for the reason that it has been impossible for me to obtain from the evidence complete information on a number of elements, as outlined by the authorities, to be considered in the determination of fair value. That no complete or accurate records of either original cost, or actual investment for this particular property exists,

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is stated by our engineers and admitted by applicant. In the conclusions as to these factors reached by both applicant's and this Commission's engineers, I am convinced an honest attempt has been made to arrive at the correct result and I believe the divergence in these results as shown by evidence is but the logical outcome of a situation where no exact records can be found. While I shall give due weight to the conclusions reached by both sets of engineers on these questions, I am inclined to think that on the facts of this case the reproduction cost method is perhaps the best guide obtainable under the circumstances.

In Case No. 476, the Commission's engineers found the depreciated reproduction cost of applicant's property, devoted to the exclusive use of the Los Gatos district to be $171,188.00, with annual depreciation thereon of $3,646.00. Applicant's acceptance of this estimate, though in error as to the Commission's findings thereof (such findings being those of the Commission's engineers), is indicated on page 13 of its final brief, wherein appears the following:

> "We maintain that the value placed upon this property by the Commission in Case No. 476 is the only one which can be considered in this (the present) application, and it is the value upon which rates should be predicated."

While I cannot completely agree with this statement, in view of the fact that this estimate just given was not only fixed by the Commission's engineers but accepted by applicant, it seems sufficiently conclusive to definitely place the depreciated reproduction cost of applicant's property used and useful in supplying the Los Gatos district at $171,188.00, as of the date when such estimate was made, January 1, 1914. Net additions to capital investment brings this figure to $172,886.32 as of January 1, 1915, and $178,286.32 as of January 1, 1916, according to data submitted by applicant.

Not including returns from fire hydrant rentals, the Commission's engineers have estimated the gross annual revenue under proposed rates at $19,784.11, while applicant estimates them at $17,230.10.

The engineers of the Commission have based their estimate entirely upon the past records of this company, while applicant has forecasted the immediate future through means of perhaps a more detailed knowledge of the situation. While the exact return under my proposed set of rates is, of course, somewhat problematic, I am of the opinion that it will fall somewhere within the limits given.

The total gross income under the proposed rates for either calculation may be obtained by simply adding the annual hydrant rental of $1,620.00.

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While a study of all these figures, heretofore given as portions of the fundamental rule, indicates that in any case the proposed rates will not give an adequate return on the depreciated reproduction cost, such depreciated reproduction cost is only one element of fair value and must conform to and meet the peculiar circumstances existing in each particular case. Under the discussion of the objections raised by the town of Los Gatos, I have already indicated the particular circumstances affecting this case and the weight that should be given thereto, and am of the opinion that substantial justice will be done if this application is granted with the exception of the rates proposed for fire hydrant service, which rates I am of the opinion should not be fixed beyond the reasonable value of the service rendered simply in order that dividends should be earned.

Before proceeding to the order I desire to call attention to something which was not contemplated in this application and upon which this Commission is not called to pass, namely, the application of the rates, which will be hereafter shown in the order, to the remaining territory served by applicant, except where they come in conflict with the rates already fixed by this Commission for the city of San Jose. I see at this time no valid objection to applicant's putting into effect the rates fixed by this order over such of its territory as is not affected by the rates heretofore fixed, and I suggest that applicant apply such rates to such territory. If any injustice results from their application the matter can be given complete consideration.

I recommend the following form of order:

ORDER.

San Jose Water Company having applied to this Commission for an order authorizing an increase in rates for water delivered to the town of Los Gatos and the inhabitants thereof; and a public hearing having been held and being fully apprised in the premises,

It is hereby found that the rates of this company (in lieu of which rates are established in this order) are unjust, unreasonable or insufficient, and

It is further found that the following rates are just and reasonable rates to be charged by the San Jose Water Company to the town of Los Gatos and the inhabitants thereof until the further order of this Commission, and the same are hereby established, as follows:

Commercial.

Monthly minimum of 4,000 gallons or less, 90 cents.
Between 4,000 and 10,000 gallons, 20 cents for each thousand gallons.
Between 10,000 and 100,000 gallons, 15 cents for each thousand gallons.
Above 100,000 gallons, 12 cents for each thousand gallons.

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Municipal and County.

Schools, city hall, and other governmental department buildings at commercial rates.

Fire hydrants, owned by company, per month.....$1 75

Parks and lawns, each meter minimum monthly..... 90

All water used, 12 cents per thousand gallons.

Sprinkling, measured by tanks and record by city, 12 cents per thousand gallons.

Sewer flushing, each meter minimum monthly.....$ 90

All water used, 12 cents per thousand gallons.

And,

It is further ordered that the commercial flat rates now charged by the San Jose Water Company in the city of San Jose are just and reasonable rates to be charged in the town of Los Gatos and the same are hereby established, and

It is further ordered that the following practice be followed by the San Jose Water Company within the town of Los Gatos, to wit:

All meters to be paid for and set up at the expense of the San Jose Water Company.

All extensions to property line to be made at the expense of the San Jose Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of August, 1915.

DECISION NO. 2655.

MAX COHEN AND W. C. HEIM

vs.

MARIN WATER AND POWER COMPANY.

Case No. 820.

Decided August 3, 1915.

Complainants petition the Commission to compel defendant company to install larger mains to serve its consumers in Kentfield, contending that the present mains are entirely too small to render efficient service. Defendant, while admitting that the mains are too small, contends that as a value has been established for its system at which it is to be purchased by the Marin Municipal Water District, it should not be required to incur this additional capital expenditure.

The Water company and the Municipal Water district reaching an agreement that the additional expense incurred will be added to the amount to be paid for the water properties, defendant directed to install the larger mains within sixty days.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On June 23, 1915, Max Cohen and W. C. Heim, of Kentfield, Marin County, filed a complaint with this Commission against Marin Water and Power Company, alleging that the facilities employed by the Marin Water and Power Company for serving water to the residents of Kentfield were inadequate. Complainants specifically alleged that a two-inch pipe used by the company for this purpose was insufficient, and request was made that the defendant be compelled to install a pipe of larger size. Marin Water and Power Company, in answer, admitted that a larger pipe was necessary for the proper service of the residents of Kentfield, but cited the fact that Marin Municipal Water District had brought proceedings to have this Commission place a value on its properties for the purpose of a condemnation suit thereafter to be instituted; that this Commission had fixed a value for these properties and that defendant had filed a petition with the Supreme Court of the State of California for a review of the decision of this Commission fixing such value. Accordingly Marin Water and Power Company asked that the complaint be dismissed and that the action abate until subsequent to August 28, 1915.

At the hearing upon this matter, on July 27th, the parties agreed to enter into a stipulation whereby Marin Water and Power Company should agree to install a six-inch or an eight-inch water main for the service of residents of Kentfield, and Marin Municipal Water District should agree, in the event that it should acquire by condemnation the properties of Marin Water and Power Company, that it would, at the same time, pay the Marin Water and Power Company an additional sum for the cost of the six-inch or eight-inch main when the price had been approved by the Railroad Commission.

This stipulation has been duly signed and filed with this Commission. The Commission will, accordingly, enter its order in this matter. The Water company will be expected to use all diligence in substituting the eight-inch main for the two-inch pipe.

Accordingly I recommend the following form of order:

ORDER.

It is hereby ordered by the Railroad Commission of the State of California that Marin Water and Power Company shall, not later than sixty days from date, install new water mains for the purpose of serving the residents of Kentfield, Marin County, as follows:

An eight-inch main connecting with the eighteen-inch main on Kemp avenue, thence across private rights of way to Laurel avenue and along

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Laurel avenue to Red Hill and Ross Landing road; a six-inch pipe in Red Hill and Ross Landing road from a point approximately 1,300 feet northwest of Laurel avenue to the junction of Laurel avenue and Red Hill and Ross Landing road; an eight-inch main in Red Hill and Ross Landing road from its junction of Laurel avenue to its junction with McAllister avenue and County road, thence along County road to D street grade; and a six-inch main from County road northerly approximately 900 feet to end of present four-inch main in Laurel Grove avenue.

It is further ordered that Marin Water and Power Company reconnect all branch mains and service pipes to this new main.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of August, 1915.

DECISION NO. 2656.

IN THE MATTER OF THE APPLICATION OF THE SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY FOR APPROVAL OF CHANGE IN RATES.

Application No. 1358.

Decided August 3, 1915.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

The Commission being advised that since the original order in this proceeding was made all of the users of water from the system of the San Joaquin and Kings River Canal and Irrigation Company, in Stanislaus County, during the past season have agreed to the rate of $2.25 per acre per season, and it appearing to the Commission, therefore, that it is proper to allow applicant to put into effect for water supplied in Stanislaus County, a rate of $2.25 per acre per season,

It is hereby ordered that the above entitled application be, and the same is hereby, granted, this order to supersede the order heretofore made on December 22, 1914.

Dated at San Francisco, California, this 3d day of August, 1915.

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DECISION No. 2657.

IN THE MATTER OF THE APPLICATION OF SIERRA MADRE TELEPHONE AND TELEGRAPH COMPANY FOR THE RENEWAL OF NOTES.

Application No. 1778.

Decided August 3, 1915.

Applicant applies for and is granted permission to renew five promissory notes aggregating the sum of $8,000.00, such notes to be renewed for a period of not exceeding two years with interest at not to exceed 7 per cent.

W. E. Farman, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of Sierra Madre Telephone and Telegraph Company, of Sierra Madre, Los Angeles County, for authority to renew the following promissory notes, payable to Flora M. Farman and originally given to provide funds for additions and betterments to applicant's plant and system.

Date	Term	Principal
April 20, 1908	4 years	$4,000 00
December 15, 1911	1 day	1,000 00
February 3, 1912	1 day	1,000 00
February 21, 1912	1 day	1,000 00
February 21, 1912	1 day	1,000 00
Total		$8,000 00

After a consideration of the evidence, I am of the opinion that this application should be granted, and I accordingly submit the following form of order:

ORDER.

Sierra Madre Telephone and Telegraph Company having applied to this Commission for authority to renew five promissory notes, in the total sum of $8,000.00, as hereinbefore set forth,

And a hearing having been held and it appearing that the purposes for which applicant proposes to issue said notes are not properly chargeable in whole or in part to operating expenses or to income,

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It is hereby ordered that Sierra Madre Telephone and Telegraph Company be, and it is hereby, granted authority to renew the following promissory notes, for a period not exceeding two years from the date of this order:

Date	Term	Principal
April 20, 1908	4 years	$4,000 00
December 15, 1911	1 day	1,000 00
February 3, 1912	1 day	1,000 00
February 21, 1912	1 day	1,000 00
February 21, 1912	1 day	1,000 00
Total		$8,000 00

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The rate of interest, payable on the notes herein authorized to be issued, shall not exceed 7 per cent per annum.

2. Within twenty days after the issuance of any of the notes herein authorized, applicant shall report to this Commission in writing the name of the payee, the date of issue, the date of maturity, the rate of interest and the face value of each note issued hereunder. Said report shall also show the purpose for which each note was issued.

3. The authority herein granted shall apply only to such notes as shall have been issued on or before December 31, 1915.

4. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of August, 1915.

DECISION NO. 2658.

IN THE MATTER OF THE APPLICATION OF HAWTHORNE WATER COMPANY AND THE ANNEX CITY WATER COMPANY AND THE TITLE INSURANCE AND TRUST COMPANY FOR AUTHORITY TO SELL AND TO PURCHASE THE DISTRIBUTING SYSTEM AND THE PUMPING PLANT OF THE HAWTHORNE WATER COMPANY.

Application No. 1792.

Decided August 3, 1915.

Hawthorne Water Company applies jointly with the Annex City Water Company to transfer its water distributing system to the latter company to which transfer the city of Los Angeles objects, contending that the Annex company

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is not in a position to properly serve additional consumers, and an investigation showing that the Annex company intends to operate the pumping plant of the Hawthorne company, and to install additional facilities and also intends to put into effect its present schedule of rates on the Hawthorne system, thereby reducing rates to such consumers. Application granted under the conditions named, and also provided that the purchaser shall file a stipulation to the effect that it accepts all responsibility to consumers of the Hawthorne system, particularly with reference to deposits made by such consumers and to return such deposits when demand is made therefor.

Jefferson P. Chandler, for Hawthorne Water Company.

H. S. McCallum, for Ascot Park Improvement Association, Protestant.

W. B. Mathews, for City of Los Angeles, Intervenor.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

Hawthorne Water Company, a utility operating in the southern part of the city of Los Angeles, has applied for permission to sell its distributing system of pipes to Annex City Water Company, a utility operating in territory directly adjoining that served by applicant, and to sell its pumping plant to one W. R. Parker, its president.

The Title Insurance and Trust Company enters as the party holding the papers in escrow, and is not concerned with any other feature of the proceeding.

At the hearing held in Los Angeles on July 27, 1915, Mr. J. S. McCallum, representing certain patrons of the Hawthorne system, appeared and protested against the consummation of the transfer. The city of Los Angeles, represented by W. B. Mathews, appeared as an interested party, stating its desire to be assured that there would be no diminution of service caused through the transfer of the property.

An agreement, which was placed in escrow some time previous to the date of this application before this Commission, provides for the following consideration for the transfer of the distributing system to Annex City Water Company:

(*a*) Lots 1 to 9, inclusive, in the West Adams Terrace tract, against which there is a mortgage for $7,500.00, secured by a note due June 15, 1916.

(*b*) Cash to the amount of $1,750.00.

(*c*) An agreement to pay $250.00 to Hawthorne Water Company, provided title to a certain pipe line is not contested by the city of Los Angeles.

(*d*) A series of 4 notes as follows:

$750.00 principal, due July 15, 1915.
$750.00 principal, due August 15, 1915.
$750.00 principal, due September 15, 1915.
$750.00 principal, due October 15, 1915.

All notes to bear 7 per cent interest per annum.

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A fifth note for $927.00 to cover an unascertained sum now held as consumers' deposits, which are to be paid by Annex City Water Company.

The consideration as above shown is valued at about $10,000.00 by the Hawthorne Water Company. The value of the distributing system is in excess of this sum, however, and it was shown that valuations made by both the city of Los Angeles and by F. E. Trask, consulting engineer, were in the neighborhood of $35,000.00 for all the property, or about $25,000.00 for the distributing system.

It developed at the hearing that the city of Los Angeles is a probable competitor with Annex City Water Company for the water business in this district. An offer made by the city of Los Angeles has been refused by Hawthorne Water Company, as the price offered was far below the owner's opinion of its value. It will be unnecessary to pass upon the value of the plant in this decision, inasmuch as I am convinced that the value is in excess of the amount agreed upon in the escrow proceedings.

The city of Los Angeles introduced evidence at the hearing to show that the pressure was already poor in certain portions of the Annex City Water Company's territory, and objected to further consumers being taken on by that company. I desired to have our hydraulic department check the pressures as testified at the hearing, and on July 31, 1915, one of this Commission's hydraulic engineers made a careful investigation of pressures over the district. As stipulated, the two water companies and the city of Los Angeles were represented when these tests were being made. The report of our engineer, which has been furnished to all the parties interested, shows that the lowest pressure found at any hydrant was 37 pounds at the highest service in the Annex City Water Company's territory. The pump of the Annex system was discharging directly into the mains at a pressure of about 60 pounds, which exceeded the pressure at that point available from the tank alone by about 36 pounds. When the pump is not running the pressure is considerably less, and I conclude that the tests made by the representative of the city of Los Angeles were made when the pump was shut down. This condition of service direct from the tank is one which I am advised seldom occurs.

The pumping plant is to be sold by Hawthorne Water Company to W. R. Parker, its president, for $1,000.00. A certified copy of a statement signed by all the stockholders of Hawthorne Water Company has been furnished the Commission. This statement acknowledges the consent of all the stockholders to this transaction.

There has also been furnished to this Commission a certified copy of a lease entered into between W. R. Parker and Annex City Water

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Company, by which Annex City Water Company will pay W. R. Parker the sum of $75.00 per month for the use of the Hawthorne pumping plant as long as desired to be used by Annex City Water Company.

Mr. Adams, president of Annex City Water Company, stated at the hearing that he intended to operate both systems as at present, until such a time as he could provide better facilities. When questioned concerning the improvements, Adams stated that he contemplated the installation of a booster pumping plant which would be run continuously. In a letter, filed August 2, 1915, the Annex City Water Company states:

> "Regarding improvements that we contemplate making in both the Annex City Water Company and Hawthorne Water Company plants, in order to supply the people in that district with more pressure, we wish to state that we will have all our plans submitted to your engineers for their approval before any steps are taken or any changes made of that nature."

The quality of service to the patrons of both these water companies will be safeguarded by this statement.

I find that the best interests of the customers will also be served by the application of the rates of the Annex City Water Company to those customers heretofore paying higher rates under the Hawthorne schedule. Both of these schedules have heretofore been fixed by the city of Los Angeles and have never come before this Commission for investigation.

It will be found necessary to sanction a slightly different schedule of notes than is shown in the agreement under escrow, by substituting a cash payment for a note which would now be overdue.

It is hereby found as a fact that the best interests of the patrons of Hawthorne Water Company and Annex City Water Company will not be diminished by the transfer of these properties according to the application.

I submit the following form of order:

ORDER.

Hawthorne Water Company having applied to this Commission for permission to sell its distributing system to Annex City Water Company and its pumping plant to W. R. Parker, and a hearing having been held and being fully apprised in the matter, and basing its order upon the preceding opinion and finding of facts,

It is hereby ordered that the Hawthorne Water Company be authorized to sell its distributing system to Annex City Water Company under the following conditions:

First—That Annex City Water Company comply in detail with the provisions of an agreement placed in escrow with Title Insurance and

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Trust Company of Los Angeles except as to that portion describing a note of $750.00 to be paid July 15, 1915. Said note shall be canceled and a cash payment of $750.00 made on August 15, 1915.

Second—That Annex City Water Company charge hereafter the same rates to customers taken from Hawthorne Water Company as the rates which are now collected by Annex City Water Company from its patrons under ordinance of the city of Los Angeles.

Third—That Annex City Water Company shall operate the pumping plant now used with the Hawthorne system, as per a lease entered into June 15, 1915, between these parties, for which a monthly rental of $75.00 is to be paid for the use of the pumping plant.

Fourth—That no changes in the manner of serving water to the patrons of those systems be made until the same have received the approval of this Commission.

Fifth—That the Annex City Water Company file with the Railroad Commission of California a stipulation that it accepts all responsibility to consumers of the Hawthorne Water Company for deposits made by such consumers with said company and will return such deposits to such consumers as may demand such return, and in all particulars assume and discharge the obligations of said Hawthorne Water Company to such consumers relating to such deposits. This order not to become effective until such stipulation has been filed with this Commission.

And it is hereby ordered that the Hawthorne Water Company be, and it is hereby, granted permission to sell its pumping plant, consisting of wells, pumps, motors and tanks, and the land upon which they are located, to W. R. Parker, for the sum of one thousand dollars.

This order shall become effective from and after August 7, 1915, providing the stipulation contained in Condition No. Five as to deposits with Hawthorne Water Company has been filed with this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of August, 1915.

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Decision No. 2659.

IN THE MATTER OF THE SALE OF THE SIERRA VALLEYS RAILWAY BY CORA HEALY TO NEVADA-CALIFORNIA-OREGON RAILWAY.

Application No. 1797.

Decided August 3, 1915.

Cora Healy, having several years ago transferred certain railway properties known as the Sierra Valleys Railway to the Nevada-California-Oregon Railway, the latter company now applies for an approval of such transfer. Application granted.

James Glynn, for Applicant.

Report of the Commission.

Gordon, *Commissioner.*

This application was filed with the Commission on July 23, 1915, and a public hearing was held on July 29, 1915. Cora Healy, from whom the property has been transferred to the Nevada-California-Oregon Railway, was not represented as her address is unknown at the present time.

The following quotation from this application shows the history of the transaction, approval of which by the Commission is sought herein:

> "That the Nevada-California-Oregon Railway, a corporation, is now the successor in interest to the said line of railway; that prior to the 12th day of April, 1912, the said Sierra Valleys Railway entered into a certain contract, in writing, with one Cora Healy, for the benefit of said Cora Healy and her children, named Cora Chambers and Gladys Chambers, in which it was agreed that the said Sierra Valleys Railway should pay, in various installments to said Cora Healy, the sum of three thousand (3,000) dollars, in full satisfaction for the death of her husband, an engineer on said railway, who was killed by the overturning of an engine thereon; which said contract, under the Constitution of California and the decisions of the Supreme Court therein, became an obligation against said railway and the property thereof, which could not be avoided by any transfer of its property or franchise; that thereafter, and after the acquirement by the Nevada-California-Oregon Railway of said Sierra Valleys Railway, an action was brought upon said contract in the Superior Court of Plumas County by said Cora Healy and in behalf of her children, Cora Chambers and Gladys Chambers, as plaintiffs, against the said Sierra Valleys Railway and the Nevada-California-Oregon Railway, as defendants, in which action all parties thereto appeared.
>
> That in said action the said Cora Healy, for herself and children, Cora Chambers and Gladys Chambers, procured judgment against

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the said defendants. An execution was levied by the sheriff of said Plumas County upon the whole of said Sierra Valleys Railway, and thereafter sale of the same was duly made under said execution, the same being sold to said Cora Healy, and thereafter a deed to said property was made, executed and delivered to her by the said sheriff of Plumas County; that thereafter, on the 12th day of April, 1912, the said Cora Healy (who was sometimes known as Cora Chambers, and also sometimes known as Cora Chambers Pool), Elva Chambers and Cora Healy, formerly Cora Chambers, as guardian of the person and estate of Gladys Chambers, a minor, made, executed and delivered to the Nevada-California-Oregon Railway their quitclaim deed to the said Sierra Valleys Railway, a copy of which deed is hereto attached."

The deed mentioned in the quotation above describes the property transferred as follows:

"That certain railroad known as and called the Sierra Valleys Railway, extending from Plumas Junction in Lassen County, thence in a westerly direction through Sierra Valley to the town of Clio in Plumas County, California."

It appears from the quotation from the application, and was brought out further at the hearing, that the Nevada-California-Oregon Railway is now in actual possession of the physical properties of the Sierra Valleys Railway and has been for some three years.

There seems to be no reason why the Commission should not approve the sale which has been made by Cora Healy to the Nevada-California-Oregon Railway, and I recommend the following form of order:

ORDER.

Nevada-California-Oregon Railway, a corporation, having applied to the Commission for its approval of the sale of the Sierra Valleys Railway to that company from Cora Healy, acting for herself and her children, and a public hearing having been held, and there appearing to be no reason why the Commission should not approve the sale,

It is hereby ordered that the sale of the Sierra Valleys Railway to the Nevada-California-Oregon Railway by Cora Healy, acting for herself and her children be, and the same is, hereby approved, provided that the property shall pass to Nevada-California-Oregon Railway subject to all existing causes of action and rights in law and in equity in favor of any person or corporation, and without prejudice to the Railroad Commission's present jurisdiction over the property and operations of Sierra Valleys Railway.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of August, 1915.

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DECISION NO. 2660.

B. GHIEFFOLI AND DOMINIC PEIRANO

vs.

MARIN WATER AND POWER COMPANY.

Case No. 712.

Decided August 3, 1915.

Complainants petition the Commission to compel defendant company to extend its mains along what is known as Butterfield road in the town of San Anselmo, and it appearing that the limited number of consumers along this road would not compensate defendant for the expenditure necessary to the construction of such main, complaint dismissed.

Frank J. Burke, for Complainants.

Joseph Haber, for Defendant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

The complainants in this action live along Butterfield road in the city of San Anselmo, Marin County, and have petitioned this Commission that an order be issued commanding the Marin Water and Power Company, the utility furnishing water service to adjacent territory, to extend its mains along Butterfield road so as to provide service to residents along that street.

There were two hearings held in this matter. At the first hearing it was evident that the complainants could not promise any stated amount as a guarantee to the Water company to insure it some reasonable return upon the proposed investment. The case was continued in the hope that sufficient customers, estimated by the Commission's hydraulic engineer to be at least 15, might be induced to guarantee to the company an aggregate payment of at least $30.00 per month. Owing to the probable purchase of defendant's entire system by the Marin Municipal Water District in the near future, the cost of the extension in this case would, by stipulation, be returned to the company in case the district took over the system.

A field investigation of the situation was made by one of the Commission's hydraulic engineers and from a canvass of all the possible consumers along the proposed extension, 9 signatures were secured. Certain of these parties were willing to guarantee a double amount of water in order to make the plan successful but the total was not over 12.

At the adjourned hearing held in San Francisco on June 29, 1915, the complainants were not able to produce additional signatures to make a total of 15 to be benefited by the extension, so the case was submitted with the understanding that any additional evidence of value might be presented before the end of the month of July.

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The time has now expired in which the additional signatures or guarantees might have been secured and nothing has been received by the Commission.

Considering all the evidence in this case, I believe that the business to be derived from the extension does not justify the investment necessary therefor, and shall recommend to the Commission that the case be dismissed.

I submit herewith the following form of order:

ORDER.

Complaint having been made by B. Gheffoli and Dominic Peirano against Marin Water and Power Company, alleging their refusal to extend their water mains along a street in the city of San Anselmo, known as Butterfield road, and public hearings having been held thereon, and it appearing from all the evidence that conditions are not such as should require Marin Water and Power Company to construct such extensions at its expense,

It is hereby ordered by the Railroad Commission of the State of California that the complaint be, and hereby is, dismissed without prejudice to the complainants.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of August, 1915.

DECISION NO. 2661.

IN THE MATTER OF THE APPLICATION OF THE VALLEY TELEPHONE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 1349.

Decided August 3, 1915.

Haines & Haines, for Valley Telephone Company.

John G. Mott and *R. D. McPherrin*, for The Imperial Telephone Company.

REPORT OF THE COMMISSION.

ORDER DENYING APPLICATION FOR REHEARING.

A public hearing having been had upon this application for rehearing, at which evidence was introduced and argument made, and it appearing to the Commission that no substantial new evidence was

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introduced or has been offered, and that all of the matters urged in this application for rehearing were fully considered in the opinion preceding the order heretofore made herein, and there appearing no good reason why said application for rehearing should be granted.

It is hereby ordered by the Railroad Commission of the State of California that the application for rehearing herein be, and the same is, hereby denied.

Dated at San Francisco, California, this 3d day of August, 1915.

DECISION NO. 2662.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR AUTHORITY TO PLEDGE AS COLLATERAL SECURITY ITS GENERAL LIEN BONDS.

Application No. 1152.

Decided August 4, 1915.

Judgment having been rendered against applicant in a certain civil case and it desiring to appeal to a higher court, it applies for and is granted permission to pledge 18 of its $1,000.00 general lien bonds during the pendency of such suit.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL OPINION.

In this supplemental application, San Francisco-Oakland Terminal Railways asks for authority to pledge as collateral its general lien mortgage bonds of the face value of $18,000.00.

In a preliminary order, dated June 23, 1914 (Decision No. 1604), which was amended by an order dated January 29, 1915 (Decision No. 2109), this Commission authorized San Francisco-Oakland Terminal Railways to pledge as collateral, subject to certain conditions, $1,000,000.00 face value of general lien mortgage bonds. In accordance with these orders, applicant reports that it has pledged $815,000.00 face value of its general lien mortgage bonds. Some of the obligations, for which said bonds have been pledged, have been paid, and bonds in excess of $18,000.00 have been returned to applicant's treasury.

On June 30, 1915, the Superior Court of Alameda County, in the case of *Theo. C. Forrester*, plaintiff, vs. *San Francisco-Oakland Terminal Railways*, a corporation, defendant, entered a judgment against the defendant for the sum of $8,500.00. Applicant is of the opinion that good ground exists for the reversal of said judgment and intends to appeal to the Supreme Court of the State of California. To stay the

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execution of the judgment while the appeal is pending, applicant will have to file a bond for $19,000.00. Commonwealth Bonding and Casualty Insurance Company has agreed to act as the surety on said stay bond, subject to the deposit with it of $18,000.00 face value of general lien mortgage bonds of San Francisco-Oakland Terminal Railways, according to the conditions specified in an agreement marked Exhibit "B," attached to this application.

We herewith submit the following form of order:

THIRD SUPPLEMENTAL ORDER.

San Francisco-Oakland Terminal Railways, having applied to this Commission for authority to pledge $18,000.00 face value of its general lien mortgage bonds, the issuance of which has heretofore been authorized by this Commission, with Commonwealth Bonding and Casualty Insurance Company,

And good cause appearing,

It is hereby ordered that San Francisco-Oakland Terminal Railways be given authority, and it is hereby given authority, to pledge with Commonwealth Bonding and Casualty Insurance Company $18,000.00 face value of its general lien mortgage bonds.

The authority herein granted is granted upon the following conditions and not otherwise:

1. The bonds herein authorized to be pledged shall be pledged with Commonwealth Bonding and Casualty Insurance Company only for the purpose of indemnifying said surety company for a bond to be furnished by the surety company to be filed with the Superior Court of Alameda County to stay execution of the judgment in a case entitled *Theo C. Forrester,* plaintiff, vs. *San Francisco-Oakland Terminal Railways,* a corporation, defendant.

2. San Francisco-Oakland Terminal Railways shall within ten days file a statement in writing with this Commission that when the damage case heretofore referred to shall have been decided by the Supreme Court of the State of California, it will take necessary steps to secure the release of the bonds herein authorized to be issued.

3. San Francisco-Oakland Terminal Railways shall report within thirty days such action as it may take under the order herein.

4. The authority herein given shall apply to such bonds as shall have been pledged with Commonwealth Bonding and Casualty Insurance Company on or before August 31, 1915.

It is hereby further ordered that this Commission's order dated June 23, 1914 (Decision No. 1604), and the order dated January 29, 1915 (Decision No. 2109), shall remain in full force and effect, except in so far as modified by this third supplemental order.

Dated at San Francisco, California, this 4th day of August, 1915.

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DECISION NO. 2663.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR AUTHORITY TO PLEDGE AS COLLATERAL SECURITY ITS GENERAL LIEN BONDS.

Application No. 1152.

Decided August 4, 1915.

Applicant desiring to appeal a certain civil suit in which judgment was rendered against it, and it being necessary to pledge bonds of the face value of $40,000.00 pending such appeal, it applies for and is granted permission to pledge its general lien bonds in the amount applied for.

REPORT OF THE COMMISSION.

FOURTH SUPPLEMENTAL OPINION.

In this supplemental application, San Francisco-Oakland Terminal Railways asks for authority to deposit as collateral its general lien mortgage bonds to the face value of $40,000.00.

In a preliminary order, dated June 23, 1914 (Decision No. 1604), which was amended by an order dated January 29, 1915 (Decision No. 2109), this Commission authorized San Francisco-Oakland Terminal Railways to pledge as collateral, subject to certain conditions, $1,000,000.00 face value of general lien mortgage bonds. In accordance with these orders, applicant reports that it has pledged $815,000.00 face value of its general lien mortgage bonds. Some of the obligations, for which said bonds have been pledged, have been paid and bonds to the amount of $40,000.00 have been returned to applicant's treasury.

On September 26, 1914, the Superior Court of Contra Costa County, in the case of *Jennie L. Haynes, Warner S. Haynes*, an infant, and *Jennie L. Haynes*, his guardian, plaintiffs, vs. *San Francisco-Oakland Terminal Railways*, a corporation, and *East Shore Suburban Railway Company*, a corporation, defendants, entered a judgment against the defendants for the sum of $15,000.00 and costs. Applicant is of the opinion that good ground exists for the reversal of said judgment and intends to appeal to the Supreme Court of the State of California. To stay the execution of the judgment while the appeal is pending, applicant will have to file a bond for $30,500.00. Commonwealth Bonding and Casualty Insurance Company has agreed to act as the surety on said stay bond, subject to the deposit with it of $40,000.00 face value of general lien mortgage bonds of San Francisco-Oakland Terminal Railways, according to the conditions specified in an agreement marked Exhibit "B," attached to this application.

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We herewith submit the following form of order:

FOURTH SUPPLEMENTAL ORDER.

San Francisco-Oakland Terminal Railways, having applied to this Commission for authority to deposit $40,000.00 face value of its general lien mortgage bonds, the issuance of which has heretofore been authorized by this Commission, with Commonwealth Bonding and Casualty Insurance Company, and good cause appearing,

It is hereby ordered that San Francisco-Oakland Terminal Railways be given authority, and it is hereby given authority, to deposit with Commonwealth Bonding and Casualty Insurance Company $40,000.00 face value of its general lien mortgage bonds.

The authority herein granted is granted upon the following conditions and not otherwise:

1. The bonds herein authorized to be deposited shall be deposited with Commonwealth Bonding and Casualty Insurance Company only for the purpose of indemnifying said surety company for a bond to be furnished by the surety company to be filed with the Superior Court of Contra Costa County to stay execution of the judgment in the case entitled *Jennie L. Haynes, Warner S. Haynes,* an infant, and *Jennie L. Haynes,* his guardian, *plaintiffs,* vs. *San Francisco Oakland Terminal Railways,* a corporation, *East Shore Suburban Railway Company,* a corporation, *defendants.*

2. San Francisco-Oakland Terminal Railways shall within ten days file a statement in writing with this Commission that when the damage case heretofore referred to shall have been decided by the Supreme Court of the State of California, it will take necessary steps to secure the release of the bonds herein authorized to be issued.

3. San Francisco-Oakland Terminal Railways shall report within thirty days such action as it may take under the order herein.

4. The authority herein given shall apply to such bonds as shall have been deposited with Commonwealth Bonding and Casualty Insurance Company on or before August 31, 1915.

It is hereby further ordered that this Commission's order dated June 23, 1914 (Decision No. 1604), and the order dated January 29, 1915 (Decision No. 2109), shall remain in full force and effect, except in so far as modified by this fourth supplemental order.

Dated at San Francisco, California, this 4th day of August, 1915.

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DECISION NO. 2664.

IN THE MATTER OF THE APPLICATION OF PEOPLES WATER COMPANY FOR REORGANIZATION.

Application No. 1531.

Decided August 4, 1915.

Peoples Water Company and Frank C. Havens having filed applications for rehearing in the above entitled action and there being no just grounds upon which a rehearing could be granted, applications denied.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

Peoples Water Company made its application in the above entitled proceeding for an order authorizing the transfer of its property to a corporation to be hereafter organized and for an order authorizing the new corporation to issue specified amounts of stock and bonds in exchange for the property. On July 10, 1915, this Commission made its order granting the application, subject to certain conditions, to which no objection has been made.

Peoples Water Company and Frank C. Havens have now filed petitions for rehearing. In these petitions no objection is made to the order of July 10, 1915, granting the application, but a claim is made that the sum of $14,100,000.00 referred to in the opinion, is less than the real value of the property for other purposes, such as the establishment of rates or the sale or condemnation of the property.

The opinion of July 10, 1915, after finding "that the fair value of the property of Peoples Water Company at this time is the sum of $14,100,000.00," distinctly states as follows:

> "It must be borne clearly in mind that this value is determined on for the purposes of this proceeding only. It may very well be that a proceeding before this Commission to fix the just compensation which the public should pay for this plant upon taking it over would result in a different figure."

The Commission thus clearly stated that the value found was one for the purpose of the present proceeding only. It would be manifestly improper to make a finding in the present proceeding as to the value of the property for the purpose of some entirely different proceeding which has not been brought before the Commission. In a condemnation proceeding it may be necessary to consider certain elements of value which it was not necessary or proper to consider in the present proceeding, but for rate fixing purposes property not used and useful would not be included.

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We do not consider it necessary to comment in detail upon the statements contained in the petitions for rehearing further than to state that the Commission did consider certain elements of value which the petitions state the Commission failed to consider, so that the petitions are incorrect in their allegations on this point.

We find no good reason for granting a rehearing.

ORDER DENYING PETITION FOR REHEARING.

Peoples Water Company and Frank C. Havens having filed petitions for rehearing in the above entitled proceeding, and careful consideration having been given to the same, and no good reason appearing why such petitions should be granted,

It is hereby ordered that said petitions for rehearing be, and the same are hereby, denied.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION No. 2665.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF APPLICANT'S FIRST MORTGAGE BONDS TO THE AMOUNT OF THREE HUNDRED THOUSAND DOLLARS.

Application No. 1391.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas this Commission in its first supplemental order, dated March 19, 1915 (Decision No. 2244), in the above entitled matter, authorized The Southern Sierras Power Company to issue and sell at not less than 90 per cent of the face value plus accrued interest, $300,000.00 face value of its 6 per cent twenty-five-year first mortgage bonds; and

Whereas applicant in Application No. 1739 filed with this Commission on June 22, 1915, asks for authority to pledge $75,000.00 face value of said bonds as security for three notes, each of the face value of $25,000.00, and good cause appearing,

It is hereby ordered that this Commission's order dated March 19, 1915 (Decision No. 2244), be amended, and hereby is amended, so as to permit applicant to pledge bonds number 4526 to 4550, both inclusive, with International Trust Company of Denver, to secure a note for

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$25,000.00; bonds numbered 4576 to 4600, both inclusive, with First National Bank of Denver, to secure a note for $25,000.00; and bonds numbered 4551 to 4575, both inclusive, with Denver National Bank of Denver, to secure a note for $25,000.00.

It is hereby further ordered that when the notes to which reference has been made are paid, the bonds pledged as collateral shall be returned to applicant's treasury and thereafter issued only upon order of this Commission.

It is hereby further ordered that the authority herein granted shall apply only to such bonds as may be pledged on or before April 5, 1917.

It is hereby further ordered that this Commission's order dated March 19, 1915 (Decision No. 2244), shall remain in full force and effect except as it may be in conflict with this second supplemental order.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION No. 2666.

IN THE MATTER OF THE APPLICATION OF THE CITY OF SANTA CRUZ FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO THE HIHN WATER COMPANY FOR ITS LAND, PROPERTY AND RIGHTS.

Application No. 1639.

Decided August 4, 1915.

Upon application of the city of Santa Cruz the Commission proceeds to fix the just compensation to be paid for the water properties of the Hihn Water Company, and after a valuation of the properties and a review of valuations submitted by the company's engineers in which the question of water right values is given particular consideration, it being determined that the water company's water rights have a value separate and distinct from its land values, the sum of $149,764.00 is established as a fair and reasonable price for the properties in question.

J. L. Johnston, for Applicant.

C. B. Younger, for the Hihn Water Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This proceeding is brought under section 47 of the Public Utilities Act which provides in part as follows:

> "The Commission shall have power to ascertain the value of the property of every public utility in this state and every fact which

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in its judgment may or does have any bearing on such value. The Commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every public utility."

Section 70 of the Public Utilities Act, which need not be quoted in full at this time, lays down the procedure to be followed in carrying out the provisions of section 47.

A new section was added to the Constitution of California by the election of November 3, 1914, known as section 23*a* or article XII, and reads as follows:

"The Railroad Commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the state or any county, city and county, incorporated city or town, or municipal water district, and the right of the legislature to confer such powers upon the Railroad Commission is hereby declared to be plenary and to be unlimited by any provisions of this constitution. All acts of the legislature heretofore adopted, which are in accordance herewith, are hereby confirmed and declared valid."

The effect of adding this new section to the constitution is to remove all doubt concerning the constitutionality of sections 47 and 70 of the Public Utilities Act and with greater particularity explains the power and jurisdiction of the Commission under sections 47 and 70.

The petition of the city of Santa Cruz, hereinafter called the applicant, was filed on April 20, 1915, by the council of that city and sets forth, first: That said petitioner is the legislative body of the city of Santa Cruz, a municipal corporation in the State of California. Second: That it is the intention of said council to initiate such proceedings as may be required under the law governing said city, for the purpose of submitting to the voters of said city, a proposition to acquire under eminent domain proceedings, or otherwise, the existing public utility commonly called the "Hihn Water System," and the lands, property and rights connected with such existing public utility, said lands and property being set forth in an exhibit marked Exhibit "A" hereunto attached and made a part of this opinion and order.

A public hearing was held on this application in the city of Santa Cruz, California, on June 25, 1915, at which time the Hihn Water Company, hereinafter called the Water company, by testimony, and by exhibits in support of such testimony, presented its valuation of the system to the Commission, with detailed description thereof. In view of the fact that a detailed description of the property is attached hereto and marked Exhibit "A," it is not necessary at this time to enlarge

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upon the description of the property as given by witnesses and in exhibits in the testimony of the witnesses testifying as to value of the Water company.

Mr. C. H. Loveland, of the hydraulic engineering department of the Commission, also presented a valuation of the property and gave testimony in connection therewith.

The results of valuations submitted at the hearing follow:

	Estimated cost new	Depreciated reproduction cost as of May 1, 1915
Commission's hydraulic engineers	$227,908 00	$124,614 00
Engineer for water company	235,976 00	182,913 00

The discrepancy in the estimate of reproduction cost less depreciation of the system as of May 1, 1915, between the engineers, is principally due to the method of depreciation and the deterioration of reservoirs and pipe lines.

It is contended by the engineer for the Water company that the sinking fund method of depreciation should be used in arriving at the depreciated value. The commission's engineers used the straight line method in their report submitted.

The engineer for the Water company has not depreciated the reservoirs and the cast-iron pipe lines. He presented the argument in testimony that no depreciation has occurred either from physical deterioration or obsolescense.

The Commission's engineer testified that obsolescence should be considered as well as physical deterioration in arriving at a depreciated value. He further testified that in his opinion economical operation will require that the plant be reconstructed and certain of the present reservoirs eliminated.

A large part of the cast-iron pipe is of 6-inch or less in size and may become inadequate if, in the future, a larger water supply is required. The testimony shows that the construction of a storage reservoir on the East Branciforte Creek, above the present intake, has been contemplated and if constructed will supersede the present Branciforte reservoir and render it obsolete. There are four small distribution reservoirs in this system, the largest of which has a capacity of four million gallons. Small reservoirs, such as these, are known to have been abandoned on many systems and it is the exception, rather than the rule, that small reservoirs have continued in operation throughout a long period of years.

In arriving at the fair value of this plant, I have considered the purpose and manner for which it is now used. The testimony of the

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city's witnesses shows that a large part of the distribution system is paralleled by the city's mains and as a consequence their service value decreased, but it is manifestly unjust to conclude that this system has a lesser value because of some future plans of a possible purchaser.

In this regard I desire to point out this Commission's Decision No. 1439, *In the matter of the application of Frank Kummeth for permission to sell the Sanger Water Works to the City of Sanger, and of the City of Sanger to buy, Application No. 1041.*

A discussion of the various points of difference between these engineers would lead to useless refinement. It is sufficient to say that I have given careful consideration, both at the hearing and subsequently to the method used by each engineer.

I shall now proceed to discuss the question of the value of water rights. The Water company diverts its water from the East Branciforte, West Branciforte and Majors Creek. The water is diverted from the banks of the streams and the Water company contend that it is entitled to a value for water rights. In the case of *San Joaquin and Kings River Canal and Irrigation Company* vs. *County of Stanislaus*, 233 U. S. 454, the Supreme Court of the United States held, that by virtue of the appropriation the canal company had secured a separate property right. This is a case of the appropriation of water from the banks of a natural stream by an appropriator who did not own land in connection with such appropriation. The evidence in this proceeding shows: First, there is a live stream; second, the doctrine of riparian rights and appropriations can be applied in this case; third, the Water company is not the owner of land in connection with such diversion of water. I am of the opinion that the water rights of this company have a value separate and distinct from the lands.

Testimony as to the value of water rights was submitted by these engineers as follows:

Engineer for Water company, based on price paid by city for Liddell Spring—	
Majors Creek—47 miner's inches	$51,300 00
Scotts Valley—15 miner's inches	25,500 00
East Branciforte—46 miner's inches	80,800 00
Total	$157,600 00
Commission engineers	$25,150 00
Commission engineers, based on price paid by city for Liddell Spring, using length of frontage as the unit	$38,300 00

The city of Santa Cruz purchased, in 1912, the right to certain water in what is known as Liddell Creek for the sum of $20,000.00. The Water company made its appraisal of its water rights by a quantity

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measure, using the above mentioned purchase by the city as a basis for the value per inch of water and adding thereto the cost of constructing a transmission system from Liddell Creek to a point equidistant from the city with the Water company's present sources of supply. There are only four measurements available as to the quantity of water in Liddell Spring and these are scattered over a period of six years. There are three measurements of Majors Creek; two of the East Branciforte Creek and one of Scotts Valley. After carefully considering these measurements and the testimony, I am of the opinion that the data available as to the quantity of water in these streams is inadequate to base an estimate of the value of these rights upon a quantity measurement.

Testimony as to the method of procedure in securing these water rights shows that the Water company probably acquired their rights by purchase from the various landowners riparian to the streams and the cost of obtaining waivers would in this case vary more directly with the frontage on the stream than with a quantity measurement.

The Commission's engineers submitted two estimates of the cost of obtaining waivers of their rights from landowners riparian to the streams.

The estimate of $25,150.00 is based upon the price paid by the city for its Liddell Spring supply, but it is estimated that for certain portions of the frontage on the streams the cost of obtaining these waivers would be less than in the case of Liddell Spring because of the fact that a large part of the course of these streams is through the town of Santa Cruz, and also these streams are fed by other streams and, therefore, in diverting water, the damage sustained by the riparian owners would be less than if all the water is diverted as in the case of Liddell Creek.

In the estimate of $38,300.00 as the cost of obtaining waivers of riparian rights, the Commission's engineer used, as a unit cost, the price per front foot paid by the city for its Liddell Creek rights.

After carefully considering these different estimates of value, I recommend that some such sum be allowed as these water rights must have cost and would cost if purchased today.

In determining the fair value of this property it must be considered as a going concern, although no evidence was submitted as to what sum, if any, should be allowed for this element of value.

In this connection I desire to refer to this Commission's decision No. 2586, *In the matter of the application of Peoples Water Company for reorganization, Application No. 1531,* which states in part as follows:

> "Going concern value as urged by Mr. Creed on behalf of the company is entirely dissociated from any idea of good will value,

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but is in his judgment a value which a public utility plant has because it has customers, hence an established business, and has a reasonable assurance of the continuance of that business, the uncertainties of getting that business are removed and is to be distinguished from the value of a plant which has no consumers or only a few consumers and whose future business success is more or less uncertain. With this general statement of Mr. Creed's I agree, but the difficulty arises in determining what this value is or what measure to apply to arrive at this value."

The annual report of the Water company for the year ending December 31, 1913, shows a gross revenue of $16,955.64, and a deficit of $1,975.70. No amount was set aside for depreciation. The annual report for 1914 shows a gross revenue of $13,701.00 and a deficit of $3,996.00.

These records show a decided decrease in revenue. It is impossible to foretell, at this time, whether or not this decrease will continue in the future and to what extent. There have been decisions of courts which have recognized going value and the latest decisions seem to favor valuing a utility as it is found without a specified separate finding as to going value.

From letters introduced as evidence at the hearing it appears that an understanding had been arrived at between the owners of this water system and the city of Santa Cruz that, while the question of the value of the system should be determined by the Railroad Commission, the city would not be required, in any event, to pay more than $150,000.00 and while the valuation here found is in no wise based upon that understanding, it is worthy of mention as indicating what the Water company would be willing to accept for the system, which agrees very closely with the value found by the Commission.

I submit herewith the following finding:

FINDING.

The city of Santa Cruz, an incorporated city, having applied to this Commission to fix a fair value to be paid for the land, property and rights of the Hihn Water System, a public utility, and a public hearing having been held, and being fully apprised in the premises,

The Railroad Commission hereby finds as a fact that the just compensation to be paid by the city of Santa Cruz to the Hihn Water Company for the land, property and rights of the public utility water system known as the Hihn Water System of Santa Cruz, which is more specifically described in Exhibit "A" attached hereto and made a part of this finding, is the sum of $149,764.00.

It is also found as a fact that as the valuation found in this proceeding is for the purpose of indicating to the city of Santa Cruz what sum it might reasonably pay for the property in question and as such valuation may contain certain elements which would not be a part of a

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valuation found for rate fixing purposes, such as including property not used and useful to the water system, etc., it is expressly understood that this valuation can not be set forth at any time by any one as the valuation for rate fixing purposes.

The foregoing opinion and finding are hereby approved and ordered filed as the opinion and finding of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of August, 1915.

EXHIBIT "A."

Land, Property and Rights of the Hihn Water Company, as follows:

LAND.

High Street Reservoir—Part of lot 5, block "A," city of Santa Cruz.

Majors Creek Intake—First parcel of land described as follows: Commencing at a point in the middle of Cojo or Majors Creek 100′ northeasterly of a post marked station "O," which said post stands in the middle of said creek near an oak tree on the west bank of said creek marked "B.M.," thence the following courses: westerly at right angles to said creek 50′, southwesterly and parallel with said creek 150′ southeasterly and across said creek 100′, northeasterly and parallel with said creek 150′, and westerly 50′ to the point of beginning.

Second parcel of land described as follows: Commencing at a maple tree marked "B.M." on the east side of Majors or Cojo Creek, thence the following courses: easterly and nearly right angles with said stream 40′, northerly 150′, westerly 100′ crossing said creek, southerly 150′ and easterly across said creek to point of beginning.

Majors Creek Settler—Parcel of land described as follows: Commencing at a point in the middle of the open cut at the south end of the tunnel of the Santa Cruz Water Company on the Rancho Refugio, from which point the south portal of said tunnel bears north 4¼° west, 22 feet distant, thence the following courses: 88° W. 125′; N. 2° E. 30′; S. 88° E. 131.5′; S. 68¼° E. 130′; S. 21¾° W. 30′; N. 68¼° W. 125′ to place of beginning.

Branciforte Reservoir—Parcel of land described as follows: Commencing on the west side of Branciforte avenue in the city of Santa Cruz, in said county, at a point formed by the intersection of the westerly line of said avenue with the southerly line of land now or formerly belonging to one Smith; thence the following courses: S. 19° 10′ W. 112′; N. 65° 15′ W. 8.25′; N. 40° 15′ W. 265′; N. 44° E. 126′; S. 28° 15′ E. 195′ and S. 64° E. to the point of beginning.

Branciforte Intake—Parcel of land described as follows: Commencing at a point on the easterly side of the Branciforte Creek on the north boundary of land formerly of Henry Rice, on the quarter-section line running east and west through the middle of section 29, T. 10 S., R. 1 W., distant 1,311′ west of the east line of said section, thence in the following courses: S. 89° 56′ W. 108′; N. 29° 00′ W. 65′; N. 18° 15′ E. 252′; N. 52° 15′ E. 91′; S. 69° 00′ E. 86′; S. 52° 15′ W. 109′; S. 11° 30′ W. 177′, and S. 19° 15′ E. 88′ to the point of beginning.

Scotts Valley Reservoir—That certain tract of land situated within the boundaries and forming a part of the Carbonera rancho, and on the easterly side of the county road leading from the city of Santa Cruz to Scotts Valley, and bounded on the south by land of the estate of F. W. Billing; on the east by the west branch of Branciforte Creek; on the north and northwest and northeast by a private road running from said county road, said private road beginning on the easterly side of said county road at or near the northwest corner of land of the estate of F. W. Billing, and running northeasterly, southeasterly and northeasterly to and across the said west branch of Branciforte Creek.

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Physical Structures and Improvements.

Item	Quantity	Unit
East Branciforte Collection.		
Settler at dam	1	Each
Settler No. 2	1	Each
Reservoir: Appurtenances as follows: Masonry retaining wall, wooden cover, 75′ of 6″ C. I. Class B sluice pipe, 14′ of 12″ riv. iron overflow pipe, frame tool house 12′ x 12′ and barbed wire fence	1	Each
Trestle on transmission line	1	Each
Scott's Valley Collection System.		
Diversion dam: Appurtenances as follows: Drain box, and 607′ of 8″ riv. iron outlet pipe	1	Each
Flume	10,693	Foot
Box 12″ x 10″, built of redwood; tributary flumes; tributary pipe—124′ of 4″ boiler tubing, 169′ of 3″ boiler tubing, 233′ of 4″ riv. iron.		
Trestle on transmission line	1	Each
Reservoir—capacity 4 M G.	1	Each
Appurtenances as follows: Retaining foot wall, wooden cover, board fence.		
Settler near reservoir	1	Each
Majors Creek Collection System.		
Diversion dam, rock fill with rubble facing	1	Each
Old dam, log cribbing	1	Each
By pass	1	Each
Training wall—west, rock fill with rubble facing	1	Each
Appurtenances: Redwood booms and ⅝″ steel cable.		
Sand box—14′ of 6″ No. 14 riv. iron inlet pipe	1	Each
Settler	1	Each
Appurtenances: Sluice box, 40′ of 14″ riv. iron sluice pipe, 8″ crane gate with standard, spillway, fence.		
Whirling settler	1	Each
Appurtenances: Funnel and 18′ of 14″ galv. sheet iron pipe, 24′ of 8″ riv. iron sluice pipe.		
Drainage ditch	1	Each
Road to dam	1	Each
Bridge	1	Each
Trail—between tunnel portals	1	Each
Majors Creek Transmission.		
Flume—redwood box 14″ x 17″	8,000	Foot
Tunnel—45′ x 6″ bore	329	Foot
Timbering, 424 B. M.		
Settler at tunnel portal	1	Each
Appurtenances: Drainage ditch, wooden cover, redwood intake box.		
Upper High Street Reservoir	1	Each
Rubble concrete bottom, plaster finish. Appurtenances: redwood fence, road.		
Lower High Street Reservoir	1	Each
Rubble concrete, brick, concrete and cement, plaster finish, wooden cover, overflow to creek—919′ of 8″ riv. pipe, 245′ of 8″ terra cotta and 970′ of flume 8″ x 8″.		
East Branciforte Transmission Line.		
Pipe:		
8″ Riveted (14 gage)	4,599	Foot
9″ Std. screw black	417	Foot
10″ C. I. No. 1	796	Foot
10″ Riv. iron (14 gage)	11,948	Foot
12″ Casing	17	Foot
12″ Riv. iron	1,015	Foot
12″ C. I. No. 1	178	Foot

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Physical Structures and Improvements—Continued.

Item	Quantity	Unit
Gates:		
4" I. B. B. 2	2	Each
6" I. B. B. L.	2	Each
10" I. B. B. L.	2	Each
Hydrants—2½"	3	Each
Stands	1	Each
Scotts Valley Transmission Line.		
Pipe:		
6" C. I. No. 1	10,583	Foot
7" Std. screw black	209	Foot
Gates—6" I. B. B. L.	5	Each
Majors Creek Transmission.		
Supply pipe from settlers to High Street Reservoir—		
8" C. I.	328	Foot
10" C. I.	1,943	Foot
8" Riv. I. (14 gage)	32,718	Foot
10" Riv. I. (14 gage)	1,758	Foot
10" Std. casing	1,235	Foot
12" Std. casing	40	Foot
Distribution system.		
Pipe:		
Standard screw black ¾"	1,239	Foot
Standard screw black 1"	6,215	Foot
Standard screw black 1¼"	3,238	Foot
Standard screw black 1½"	2,850	Foot
Standard screw black 2"	34,116	Foot
Standard screw galv. ¾"	150	Foot
Standard screw galv. 1"	511	Foot
Standard screw galv. 1¼"	246	Foot
Standard screw galv. 2"	356	Foot
Standard screw black 2½"	6,896	Foot
Standard screw black 3"	3,155	Foot
Standard screw black 3½"	950	Foot
Standard screw black 4"	22,359	Foot
Standard screw black 5"	122	Foot
Standard screw black 6"	827	Foot
Boiler tubes 2"	50	Foot
Boiler tubes 2½"	300	Foot
Boiler tubes 3"	802	Foot
Boiler tubes 3½"	1,381	Foot
Boiler tubes 4"	2,070	Foot
Cast iron, Class B, 3"	7,064	Foot
Cast iron, Class B, 4"	20,814	Foot
Cast iron, Class B, 6"	5,208	Foot
Cast iron, Class B, 8"	5,100	Foot
Cast iron, Class B, 10"	50	Foot
Casing, standard, 4"	598	Foot
Casing, standard, 5"	3,110	Foot
Casing, standard, 6"	800	Foot
Casing, standard, 8"	1,298	Foot
Riv. iron 4"	13,665	Foot
Riv. iron 6"	1,268	Foot
Riv. iron 8"	2,261	Foot
Stop cocks:		
Brass 1"	3	Each
Brass 2"	3	Each
Brass 2½"	3	Each
Iron body, brass lined, 4"	1	Each

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Physical Structures and Improvements—Continued.

Item	Quantity	Unit
Gates:		
Wheel, brass, 1"	8	Each
Wheel, brass, 1¼"	1	Each
Wheel, brass, 1½"	10	Each
Globe, brass, 1½"	1	Each
Wheel, brass, 2"	28	Each
Wheel, iron body, brass lined, 2"	18	Each
Globe valves, brass, 2"	4	Each
Wheel gates, I. B. B. L., 2½"	9	Each
Globe valves, brass, 3"	1	Each
Wheel gates, I. B. B. L., 3"	7	Each
Wheel gates, I. B. B. L., 4"	66	Each
Gates, I. B. B. L., 6"	15	Each
Gates, I. B. B. L., 8"	6	Each
Hydrants 1½"	1	Each
Hydrants 2½"	44	Each
Hydrants 3"	7	Each
Services	1,116	Each
Services outside city	95	Each
Meter ¾"	1	Each
Meters 1"	2	Each
Meter 1½"	1	Each
All water, water rights and rights to water owned or claimed by Hihn Water Company.		

DECISION No. 2667.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR AUTHORITY TO ISSUE THREE PROMISSORY NOTES IN THE SUM OF TWENTY-FIVE THOUSAND DOLLARS EACH.

Application No. 1739.

Decided August 4, 1915.

Applicant applies for and is authorized to issue three notes of the face value of $25,000.00 each, bearing interest at not to exceed 6 per cent, and to pledge a like face value of bonds as security therefor, such notes to be issued for the purposes of refunding or renewing note in like amount to certain Denver banks.

I. B. Potter, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application of The Southern Sierras Power Company, operating in the counties of Inyo, Kern, Riverside and San Bernardino, for authority to renew three promissory notes in the total sum of $75,000.00, and to secure the same by a pledge of an equal amount of first mortgage 6 per cent twenty-five-year bonds.

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The notes which applicant desires to renew are in favor of the following parties:

Payee	Original date	Date of maturity	Interest	Principal
International Trust Company of Denver	Sept. 23, 1913	Sept. 23, 1915	6%	$25,000
First National Bank of Denver	July 9, 1914	July 9, 1915	6%	25,000
Denver National Bank of Denver	Oct. 16, 1913	Oct. 16, 1915	6%	25,000

Applicant asks for authority to renew the notes from time to time for a period not exceeding two years.

Applicant reports that the funds obtained through the issuance of the notes were used for the following purposes:

For acquisition and construction of property	$66,350 00
To pay bond interest	8,650 00
Total	$75,000 00

Certain of the items for which the note to Denver National Bank of Denver was originally given are clearly not purposes for which notes may ordinarily be issued under the terms of the Public Utilities Act. However, applicant has large open accounts payable with system corporations for construction work and I shall assume that the amounts in question are chargeable against these accounts.

Applicant also asks for authority to pledge seventy-five of its first mortgage 6 per cent twenty-five-year bonds issued under this Commission's Decision in Application No. 1391, as security for the notes herein applied for.

I herewith submit the following form of order:

ORDER.

The Southern Sierras Power Company, having applied to this Commission for authority to issue three promissory notes in the total sum of $75,000.00 and to pledge as security an equal amount of first mortgage bonds, and a hearing having been held and it appearing to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that The Southern Sierras Power Company be, and it is hereby, authorized to issue for a period not exceeding two years its promissory notes to the following parties:

Payee	Date of original note	Date of maturity	Interest	Principal
International Trust Company of Denver	Sept. 23, 1913	Sept. 23, 1915	6%	$25,000
First National Bank of Denver	July 9, 1914	July 9, 1915	6%	25,000
Denver National Bank of Denver	Oct. 16, 1913	Oct. 16, 1915	6%	25,000

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It is further ordered that The Southern Sierras Power Company be, and it is hereby, authorized to pledge as security for said notes an equal amount par value of its first mortgage 6 per cent twenty-five year bonds, the issuance of which has been authorized by this Commission in its Decision No. 2175 dated February 27, 1915, and Decision No. 2244, dated March 19, 1915.

The authority herein granted is granted upon the following conditions and not otherwise:

1. Applicant may issue the notes herein authorized for periods of four months, and thereafter from time to time renew the notes periodically without further authority from this Commission, provided that the term for which the notes are originally issued plus the term of the renewals shall not exceed two years.

2. Applicant shall not pay more than 6 per cent interest per annum on the notes herein authorized.

3. Applicant shall report to this Commission within thirty days after the issuance or renewal of any notes herein authorized to be issued or renewed, the name of the payee, the term of the note, the rate of interest and the face amount of each note, and the number of bonds pledged to secure the notes.

4. The authority herein granted to issue notes and pledge bonds shall not become effective until the payment by applicant of the fee prescribed in the Public Utilities Act.

5. The authority herein granted shall apply only to such notes as shall have been issued, and such bonds as shall have been pledged on or before April 5, 1917.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION NO. 2668.

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED WATER COMPANY OF POMONA FOR AUTHORITY TO INCREASE ITS BONDED INDEBTEDNESS TO THE TOTAL SUM OF TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS.

Application No. 1762.

Decided August 4, 1915.

Applicant applies for permission to issue $225,000.00 face value of its 6 per cent twenty year bonds, proceeds to be used for the purposes of refunding an issue

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of bonds of the face value of $175,000.00 due October 1, 1916, the balance for discharging outstanding notes. Application granted, provided applicant shall first file, for the approval of the Commission, a list of the notes proposed to be discharged, which list shall embody notes issued for capital purposes only, at which time a supplemental order will be made fixing the minimum amount at which such bonds shall be issued and to what purposes the proceeds shall be devoted.

Parker & Parker, for Applicant.

C. W. Guerin, for City of Pomona.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

In this application Consolidated Water Company of Pomona asks for authority to issue at not less than 95 per cent of the face value and accrued interest $225,000.00 face value of 6 per cent twenty-year bonds.

Applicant desires to use the proceeds to be obtained from the sale of the bonds to redeem and refund $175,000.00 face value of first mortgage bonds payable October 1, 1916, and to use the balance to discharge notes payable.

Applicant also asks for authority to execute a mortgage or deed of trust securing the payment of the $225,000.00 face value of bonds heretofore mentioned.

Consolidated Water Company of Pomona was organized on July 15, 1896. It has an authorized capital stock of $500,000.00, divided into 5,000 shares of the par value of $100.00 per share. All of the stock is outstanding. Applicant reports that instead of paying dividends, it has reinvested in plant its surplus earnings.

Applicant has a bonded indebtedness of $175,000.00. The payment of the bonded indebtedness is secured by a mortgage and deed of trust dated August 31, 1896, and executed to State Loan and Trust Company of Los Angeles. The bonds are dated August 26, 1896, and mature October 1, 1916. They bear 6 per cent interest, payable semiannually. One hundred and twenty-five (125) bonds are of the denomination of $1,000.00 each. One hundred (100) bonds are of the denomination of $500.00 each. Applicant proposes to redeem or refund the bonds now outstanding.

Applicant owns, maintains and operates a water system in Pomona and adjacent territory. In Application No. 1463, subsequently dismissed at the request of applicant, Consolidated Water Company of Pomona asked for authority to sell its plant to the city of Pomona. In connection with Application No. 1463, the company submitted a valuation prepared by Willis S. Jones. The city of Pomona submitted a valua-

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tion prepared by F. E. Trask. The value of the property, as reported by the engineers, is as follows:

Item	Trask	Jones
Real estate	$11,800	$11,800
Rights of way	2,100	2,500
Pomona Valley Protective Association	----------	15,750
Going value	35,000	40,000
Tunnel water, 122.65 inches at $1,600	196,240	----------
143.5 inches at $2,000	----------	287,000
Pumped water, 246.7 inches at $400	98,680	----------
300.0 inches at $428 net	----------	128,627
Undeveloped water rights	----------	11,000
	$343,820	$496,677
Physical property	157,643	168,767
Total	$501,463	$665,444

A summary of the company's balance sheet, as shown by its annual report of the Commission under date of December 31, 1914, is as follows:

Assets.

Total fixed capital	$548,644 89
Cash	938 67
Accounts receivable	5,571 31
Notes receivable	9,520 00
Materials and supplies	612 34
Unamortized discount on stock	217,838 45
Total assets	$783,125 66

Liabilities.

Capital stock	$500,000 00
Funded debt	175,000 00
Notes payable	59,894 85
Consumer's deposits	7,229 75
Miscellaneous assets payable	5,734 80
Reserve for accrued depreciation	16,055 52
Corporate surplus unappropriated	19,210 74
Total liabilities	$783,125 66

The company's income accounts for the past three years show earnings as follows:

Item	Year ended December 31, 1912	Year ended December 31, 1913	Year ended December 31, 1914
Operating revenue	$62,958 43	$63,402 38	$66,382 13
Operating expenses	39,564 82	40,612 97	39,239 77
Total net operating revenue	$23,393 61	$22,789 41	$27,142 36
Total non-operative revenue	7,319 56	----------	----------
Gross corporate income	$30,713 17	$22,789 41	$27,142 36
Total deductions	15,576 83	16,017 98	14,703 05
Surplus for year	$15,136 34	$6,771 43	$12,439 31

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Applicant reports that it owes in the form of notes payable the sum of $67,894.85, as per Exhibit "B" attached to this application. In the application reference is made to the installation of a high pressure fire system costing $27,615.00 and to litigation, defending title to water rights involving an expenditure of $22,000.00. It is evident that the proceeds to be obtained from the sale of $225,000.00 of bonds will not be sufficient to redeem or refund all of applicant's bonded indebtedness and notes payable.

While I am willing to recommend that applicant be permitted to issue $225,000.00 face value of bonds, such recommendation is subject to two conditions:

1. That applicant file with this Commission a statement showing the notes it desires to pay or refund, such statement to contain only those notes, the proceeds of which have been used for capital expenditures.

2. That applicant file with this Commission for its approval a copy of the mortgage or deed of trust securing the payment of the proposed $225,000.00 face value of bonds.

I herewith submit the following form of order:

ORDER.

Consolidated Water Company of Pomona, having applied to this Commission for authority to issue $225,000.00 face value of 6 per cent twenty-year bonds, and for authority to execute a mortgage securing the payment of said bonds, and a public hearing having been held, and it appearing that the purposes for which said bonds are to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Consolidated Water Company of Pomona be given, and hereby is given, authority to issue $225,000.00 face value of 6 per cent twenty-year bonds.

It is hereby further ordered that Consolidated Water Company of Pomona be given, and hereby is given, authority to execute a mortgage or deed of trust securing the payment of said $225,000.00 face value of 6 per cent twenty-year bonds.

The authority herein granted is given upon the following conditions, and not otherwise:

1. Applicant shall file with this Commission for approval a copy of the mortgage or deed of trust securing the said $225,000.00 face value of 6 per cent twenty-year bonds.

2. Applicant shall file with this Commission a list of the notes which it proposes to pay or refund through the issuance of the bonds herein authorized, said list of notes to include only those, the proceeds of which have been used for capital expenditures.

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3. Applicant shall issue the bonds herein authorized to be issued only after this Commission shall have issued a supplemental order, finding that the conditions herein enumerated have been fulfilled to the satisfaction of the Commission, and setting forth the specific purposes for which the bonds may be used, the minimum price for the sale of such bonds, and such other conditions as this Commission may set out.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION No. 2669.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER, CO-PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CUYAMACA WATER COMPANY, AND LA MESA, LEMON GROVE AND SPRING VALLEY IRRIGATION DISTRICT, FOR AN ORDER ESTABLISHING THE VALUE OF THE PROPERTY OF THE CUYAMACA WATER COMPANY AND AUTHORIZING CUYAMACA WATER COMPANY TO CONVEY SAID PROPERTY TO SAID DISTRICT.

Application No. 1432.

Decided August 4, 1915.

The Commission, in the above-entitled proceedings, having fixed the sum of $745,000.00 as a fair and reasonable price to be paid for the properties of the Cuyamaca Water Company, the Water company files its petition for rehearing, in review of which the Commission points out that the value found was in cash and not in bonds of the Water district; also that the Commission did not attempt to decide the question of transfer of title to water rights under the water right contracts entered into by the Water company, though in fixing the value of water properties of a company burdened by such contracts consideration must be given thereto. That allowances were made for all items of value in connection with this property, including losses in operation with interest thereon, during the last few years, and that there are no grounds upon which a rehearing can be granted. Application for rehearing denied.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

This is a petition for rehearing by Cuyamaca Water Company. The Commission has given careful consideration to each point presented in the petition. We shall comment on such of these points as in our opinion require consideration.

The sum of $745,000.00, which the Commission found to be the fair value of the property of Cuyamaca Water Company to be transferred

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to La Mesa, Lemon Grove and Spring Valley Irrigation District, is the fair value of the property in cash. There is no evidence in the record on which it would have been possible to base a finding concerning the probable value of the bonds to be issued by the Irrigation district or the value of said property expressed in terms of bonds instead of cash. We assume that when the property is taken over by the Irrigation district, the necessary adjustment will be made so that the owners thereof will receive in cash or the equivalent thereof in bonds, the amount found by the Commission to be its fair value in cash.

In Application No. 118 (2 Opinions and Orders of Railroad Commission of California 464) Commissioner Eshleman made a careful examination into the so-called water right contracts entered into by San Diego Flume Company, the predecessor of Cuyamaca Water Company. After an exhaustive review of the authorities, Commissioner Eshleman, at page 501, concluded:

> "It can no longer be questioned that this Commission has the right to fix the rates which may be charged by the applicant and prevent deviations from such rates, contracts to the contrary notwithstanding, and by reason of the fact that this same question is continually coming up with reference to utilities, other than water companies, I deem it proper at this time that we announce a similar conclusion with reference to all utilities. It is my opinion that no contract affecting the relationship which exists between a public utility and its patrons or in any other way affecting the public is of any effect in the face of this Commission's authority, except this Commission shall approve the same as a rate which it has a right to do under the Public Utilities Act, providing such action will not bring about discrimination."

To this conclusion we adhere. There is nothing in the decision in the present proceeding which in any way conflicts with any of the principles established by the decision in Application No. 118. Neither in our decision on said application, nor in the decision in the present proceeding, did we undertake to decide whether the so-called water right contracts did or did not transfer the title to water rights or rights to water, or whether they were or were not void *ab initio* for any purpose. These matters, as we held in the decision in the present proceeding, are for the courts to determine.

Obviously, the question whether a water system is burdened with obligations to deliver water may have a material bearing on the value of the property. Hence this Commission gave careful attention to the question of the so-called water right contracts, the considerations which were paid under them and the circumstances surrounding them. The question was considered both on the theory that the contracts did and that they did not establish valid claims to the delivery of water from

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this system, but the Commission did not attempt to encroach upon the function of the courts by undertaking to decide whether or not the contracts were valid for this purpose.

The Commission, viewing the matter in the light most favorable to Cuyamaca Water Company, by assuming that the company owns the water rights unimpaired, then analyzed the two distinct bases presented by the Water company for determining the value of these water rights and found that on each theory the water rights, in so far as covered or purported to be covered by the contracts, had, on the Water company's own showing, no substantial value.

The petition for rehearing herein, on page 27, refers to 24 miner's inches of domestic water supplied by the Cuyamaca Water Company without contract. As pointed out in the decision, Mr. W. S. Post testified that only 8.3 miner's inches are supplied without contract. Referring to the 24 miner's inches, the petition states:

> "It should be noted that the only claim for a water right value made by the company was for this domestic water, and it would certainly seem that under any theory petitioners would be entitled to this value."

While, in view of this position now taken by the Water company, it becomes unnecessary to consider further the question of value to be allowed for the water covered or purported to be covered by the contracts, we have drawn attention to this matter so that it may be perfectly clear on the one hand that we have adhered to the principles established in the decision in Application No. 118, and on the other hand, that we have carefully refrained from undertaking to decide matters which are within the province of the courts.

Some doubt is expressed in the petition as to the extent of the property of which the value was found in the decision herein. It will be sufficient in this connection, to say that the entire property as described in Exhibit No. 1, attached to the decision and made a part thereof, including all the water rights therein set forth, was valued as a going concern, and that the value found was increased to cover the water rights. The statement in the petition that no value was allowed for water rights is incorrect.

The Commission has again given careful consideration to the question of the fair value of the property and we find no reason to change the conclusion heretofore reached. While the Commission gave to each element which enters into the value of the property the consideration to which it believed the same to be entitled, petitioner in its brief gives special consideration to the cost of the property, including losses in operation.

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In this connection we desire to point out that the finding of $25,000.00 to cover reasonable deficits in maintenance and operating expenses from June 1, 1910, to July 1, 1915, includes interest at 8 per cent per annum. Petitioner in its computations does not make allowance for the value of the 601 acres of land in the vicinity of Cuyamaca reservoir, which are being retained by the company. This value is estimated at $15,005.00.

The value found by the Commission is more than large enough to return to petitioner all the money which it has invested in the property, beginning with the initial purchase price of $150,000.00 on June 1, 1910, with interest on all these moneys at the rate of 8 per cent per annum to July 1, 1915, together with the value of the property acquired for this system by Murray and Fletcher individually with interest thereon at the rate of 8 per cent per annum from the date of acquisition, together with all deficits which have accrued over reasonable maintenance and operating expenses with interest on such deficits from the time they accrued until July 1, 1915.

We may note in passing that on the depreciated reproduction value of the physical property, as testified to by engineers Dockweiler and Whitney, the value of the property would be considerably less than that established by the Commission.

Furthermore, if we start with the sum of $352,500.50, found by Mr. Eshleman to be the fair value of the property devoted to the public use at the time of the decision in Application No. 118, and bear in mind that the sum to be allowed for deficits in maintenance and operating expenses from June 1, 1910, to July 1, 1915, with interest, is $25,000.00 and not $35,000.00, and use in other respects the computations used by petitioner on page 25 of its petition, the resulting value would be $729,073.91 as contrasted with the $745,000.00 found by the Commission. As is so frequently done, petitioner in its computation confused an engineering estimate of cost to reproduce less depreciation, with the ultimate fact of the value of the property for the purpose specified.

In the decision in Application No. 118, Mr. Eshleman found that the annual cost of operation and maintenance of the property is $28,600.00. However, pending the renewal at least of the flume, Mr. Eshleman found that "the applicants can not in justice and under the law, demand more than the proportion of its operating and maintenance expenses which its adequacy represents, which is approximately $21,000.00." In other words, the amount to be allowed for maintenance and operating expenses was decreased by reason of the inadequacy of the system. Mr. Eshleman then continues:

> "I feel that a similar reduction of the other items would be warranted, but out of desire not to hamper the present owners

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> unduly and feeling the consumers can readily pay a little more without hardship if their service is improved, I shall recommend that the gross earning allowed be $66,825.03."

On a rate hearing, if the Water company can show that the inadequacy of the system has been removed, allowance will of course be made for full, reasonable operating and maintenance expenses.

That petitioner is in error in his claim that the amount found in the decision on Application No. 118 to be the fair value of the property was also depreciated by reason of the inadequacy of the system appears clearly from the following paragraph in the order:

> "The Commission further finds as a fact that the fair value of the property of the applicants devoted to the public use and upon which they would be fully entitled to earn a return provided their system were in adequate condition is $352,500.50."

Also there is no warrant in the language of the opinion in said decision that the fair value of the property was also depreciated by reason of the inadequacy of the system at that time. The best evidence on this point is the finding on the fair value of the property, which reads as follows:

> "Mr. Harroun's cost to reproduce depreciated to its present condition as corrected for the Cuyamaca lands, gives a figure of $483,134.00. This, however, as has already been pointed out, is only one of the elements to be considered. Taking it together with all the other elements required to be considered, I find as a fact from the evidence that the present fair value of the property of the applicants devoted to the public use is $352,500.50."

There was no intention in the decision herein to give the impression that the Water company has in any way acted unlawfully in connection with the Commission's decision in Application No. 118. The rubberoid roofing paper in the flume was put in with this Commission's sanction.

After careful consideration of the petition herein, prompted by a desire to do full justice to all parties concerned, we find no good reason for granting a rehearing. The petition must be denied.

ORDER ON PETITION FOR REHEARING.

James A. Murray, Wm. G. Henshaw and Ed Fletcher, co-partners doing business under the firm name and style of Cuyamaca Water Company, having filed their petition for rehearing herein, and careful consideration having been given thereto, and no good reason appearing why said petition should be granted,

It is hereby ordered that said petition be, and the same is hereby, denied.

Dated at San Francisco, California, this 4th day of August, 1915.

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DECISION No. 2670.

IN THE MATTER OF THE APPLICATION OF CITY OF SAN DIEGO FOR AN ORDER OF THE RAILROAD COMMISSION FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO JAMES A. MURRAY, ED FLETCHER AND WM. G. HENSHAW, CO-PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CUYAMACA WATER COMPANY FOR THEIR LANDS, PROPERTY AND RIGHTS.

Application No. 1482.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING PETITION FOR REHEARING.

James A. Murray, Ed Fletcher and Wm. G. Henshaw, co-partners doing a public utility water business under the firm name and style of Cuyamaca Water Company, having filed a petition for rehearing herein, and careful consideration having been given to the same, and no good reason appearing why said petition should be granted,

It is hereby ordered that said petition be, and the same is hereby, denied.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION No. 2671.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER FIXING RATES TO BE CHARGED AND COLLECTED FOR WATER FURNISHED, AND TO BE FURNISHED BY THEM AND SERVICE RENDERED BY THEM IN FURNISHING WATER, AND IN FURNISHING, CARRYING AND CONVEYING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Application No. 1231.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING PETITION FOR REHEARING.

Applicants in the above-entitled matter having filed a petition for rehearing herein, and careful consideration having been given to the same, and no good reason appearing why said petition should be granted,

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It is hereby ordered that said petition be, and the same is hereby, denied.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION No. 2672.

IN THE MATTER OF THE APPLICATION OF MT. WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE FOUR HUNDRED AND FORTY THOUSAND DOLLARS PAR VALUE OF FIRST MORTGAGE 6 PER CENT BONDS.

Application No. 1766.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission in an order dated July 24, 1915 (Decision No. 2633), authorized Mt. Whitney Power and Electric Company to pledge $440,000.00 face value of bonds as collateral security for notes given Tulare County Power Company; and

Whereas applicant now asks this Commission to amend its order so as to permit it to pledge said $440,000.00 face value of bonds to secure the notes, the proceeds of which are to be used to pay the notes given to Tulare County Power Company,

It is hereby ordered that this Commission's order dated July 24, 1915 (Decision No. 2633), be amended, and hereby is amended so as to permit Mt. Whitney Power and Electric Company to pledge the bonds therein authorized to secure notes, the proceeds of which are to be used to pay the notes given to Tulare County Power Company.

It is hereby further ordered that this Commission's order dated July 24, 1915 (Decision No. 2633), remain in full force and effect, except as modified by this first supplemental order.

Dated at San Francisco, California, this 4th day of August, 1915.

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DECISION NO. 2673.

IN THE MATTER OF THE APPLICATION OF HALF MOON BAY LIGHT AND POWER COMPANY FOR AN ORDER VALIDATING FOUR CERTAIN PROMISSORY NOTES HERETOFORE ISSUED TO FRENCH AMERICAN BANK.

Application No. 1728.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The authority of this Commission not being required to issue the notes to which reference is made in this application,

It is hereby ordered that the above-entitled application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 4th day of August, 1915.

DECISION NO. 2674.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY TO SELL ITS DISTRIBUTING SYSTEM AND PLANT TO MT. WHITNEY POWER AND ELECTRIC COMPANY, AND MT. WHITNEY POWER AND ELECTRIC COMPANY TO PURCHASE SAID PROPERTY.

Application No. 1756.

Decided August 4, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas, this Commission in an order dated July 23, 1915 (Decision No. 2629), authorized Mt. Whitney Power and Electric Company to acquire the property of the Tulare County Power Company and to issue to said Tulare County Power Company in payment for said property its promissory notes; and

Whereas, Mt. Whitney Power and Electric Company has asked this Commission to amend its order so as to permit it to issue its notes for the same amount and the same maturity to parties other than said Tulare County Power Company, and to use the proceeds to be obtained through the issuance of the notes to pay the notes in favor of said Tulare County Power Company,

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It is hereby ordered that this Commission's order dated July 23, 1915 (Decision No. 2629), in the above-entitled matter be, and hereby is, amended so as to permit Mt. Whitney Power and Electric Company to issue its notes authorized in said order to parties other than Tulare County Power Company.

It is hereby further ordered that the proceeds to be obtained through the issuance of the notes herein authorized to be issued shall be used to pay and retire the notes in favor of Tulare County Power Company.

It is hereby further ordered that this Commission's order dated July 23, 1915 (Decision No. 2629), shall remain in full force and effect, except as modified by this first supplemental order.

Dated at San Francisco, California, this 4th day of August, 1915.

Decisions Nos. 2675, 2676, grade crossings; not printed. See end of volume.

DECISION No. 2677.

IN THE MATTER OF THE APPLICATION OF COMPTON WATER AND LIGHTING COMPANY FOR PERMISSION TO MORTGAGE THEIR PROPERTY.

Application No. 1695.

Decided August 7, 1915.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

Whereas this Commission by its order dated June 17, 1915 (Decision No. 2488), authorized applicant in the above entitled matter to issue a note or notes in the sum of $3,500.00 and to secure the same by a mortgage upon its property, provided it submit to this Commission for approval a copy of the mortgage; and

Whereas applicant on August 3, 1915, submitted for approval a copy of a mortgage which has been marked Exhibit "A" in the above entitled matter,

It is hereby ordered that the said mortgage marked Exhibit "A" be and the same is hereby approved.

It is hereby further ordered that this Commission's order dated June 17, 1915, remain in full force and effect except as modified by this first supplemental order.

Dated at San Francisco, California, this 7th day of August, 1915.

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DECISION No. 2678.

IN THE MATTER OF THE APPLICATION OF CITY OF ALBANY FOR AN ORDER DIRECTING THE WIDENING OF MAIN STREET IN THE CITY OF ALBANY AT THE POINT WHERE SAID MAIN STREET CROSSES THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Application No. 1740.

Decided August 7, 1915.

City of Albany at present having a right of way across the tracks of Santa Fe Railway Company, desires to widen same approximately twenty feet to conform with the general street lines. The Railway company, while primarily objecting to such work, agrees to abide with the terms of the Commission's order, and after review, application granted, the city to stand all expenses of such construction. The Railway company to do all work between its tracks, charging the city therefor.

Leon A. Clark, for Applicant.

M. W. Reed, for The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This application was filed with the Commission on June 23, 1915, and a public hearing was held on August 3, 1915. The issue involved in this application is in regard to the terms upon which the Santa Fe shall grant to the city of Albany a strip 20 feet wide across its 40-foot right of way for the purpose of widening an existing crossing. Some question was raised at the hearing as to the Commission's jurisdiction, in cases of this sort where an alteration is to be made in an existing crossing, and although I am far from being satisfied that there is any merit in the contentions of counsel for the Santa Fe in this regard, it will not be necessary to consider the matter at this time since it was stipulated by both parties that they would abide by the Commission's decision. The Railway company will, in other words, grant an easement for the ground necessary for widening the crossing upon such terms as the Commission prescribes and the city will accept an easement so drawn up.

Main street runs east and west through the city of Albany and is the principal street of the city. It is 80 feet wide throughout its length except at the crossing of the Santa Fe right of way where the right of way projects southward 20 feet into the street. The city has for some time sought to acquire this strip so that this street could be widened at this point to the full 80 feet to make it correspond with the rest of

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the street, but the two parties at interest have been unable to come to an agreement. The city objected to some phrases in the tentative deed offered to it by the Railway company and the Railway company on its part has taken the ground that if it granted the necessary easement it should not be called upon to pay any of the cost of installing or improving the crossing.

There appears to be no reason why the applicant should not be granted permission to widen the existing crossing 20 feet, and the only question now to be considered is in regard to the matter of expense. To my mind the situation here, as far as the cost of the crossing is concerned, is exactly analogous to that existing when a railroad company deeds property for a new crossing. For reasons which have been so often stated in the Commission's previous orders that it is not necessary to reiterate them here, it has been customary, unless unusual conditions obtain, to require the applicant to stand all expense connected with the opening of the crossing it has applied for, and I see no reason why this should not be done in this case. The crossing has been graded over the rails on the right of way of the Santa Fe and the expense connected with fixing the crossing so it can be used will be trifling. At some future time the sidewalks will be extended across the track, and possibly the curb will be built to the track and the gutter under the track; and if and when this is done the expense should be considered as part of the cost of the original crossing. For reasons connected with the safety of train operation whatever work is done between the rails should be carried on by the Railway company even though the expense is being borne by the city.

I believe the terms upon which the crossing should be installed, as I have outlined them, are fair and equitable and I recommend the following form of order:

ORDER.

City of Albany, having applied to the Commission for permission to widen the existing crossing at Main street over The Atchison, Topeka and Santa Fe Railway from sixty (60) to eighty (80) feet, and a public hearing having been held, and there appearing to be no reason why this permission should not be granted, and it appearing to be fair and equitable that the expense of this work should be borne by the city of Albany; that the maintenance of this crossing hereafter should be borne partly by the city and partly by the railway company,

It is hereby ordered that the City of Albany be and the same hereby is given permission to widen the existing crossing of Main street with the track of The Atchison, Topeka and Santa Fe Railway Company from a width of sixty (60) feet to a width of eighty (80) feet, subject to the following conditions, viz:

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1. The entire expense of constructing the crossing in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

2. The expense of maintaining the crossing thereafter in good and first-class condition shall be borne by applicant to within two (2) feet of the rails of The Atchison, Topeka and Santa Fe Railway Company.

3. The expense of maintaining the crossing thereafter between the rails and to a distance of two (2) feet outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

4. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of August, 1915.

DECISION NO. 2679.

IN THE MATTER OF THE APPLICATION OF THE NORTH SACRAMENTO LIGHT AND WATER COMPANY FOR AN ORDER AUTHORIZING THE CHARGE AND COLLECTION OF CERTAIN WATER RATES.

Application No. 1726.

Decided August 7, 1915.

Applicant engaged primarily in the real estate business, has constructed and is operating a small water distributing system delivering water at monthly rates of $1.00 minimum for 4,000 gallons or less, 15 cents per 1,000 gallons for excess. This rate it contends does not cover operating expenses, and though applicant states it does not desire a return upon the value of this property, it applies for permission to increase rates sufficient to cover expenses. After investigation the following schedule established to become effective August 1, 1915: $1.00 per month minimum for 500 cubic feet or less; 10 cents per 100 cubic feet for excess, with a flat rate of $5.00 and $2.50 to two certain schools served by applicant.

Emanuel Hendrickson, for Applicant.

Marshall Diggs, in propria persona.

J. W. Johnson, for Consumers.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

North Sacramento Light and Water Company, operating a water utility in connection with the marketing of its real estate near Sacramento, has applied to this Commission for permission to establish the following schedule of rates:

Metered rates.

$1 00 monthly minimum for 4,000 gallons or less.
15 per 1,000 gallons for all excess over 4,000 gallons per month.

Flat rates.

For public school and grounds situate near Del Paso boulevard, monthly $5 00
For public school and grounds situate on Marysville road, monthly---- 2 50

This schedule of rates is declared to be the same as has been collected by applicant since May, 1914, at which time a meter rate was established. Previous to that time a flat rate of $1.00 per month per service had been in effect. At the time of the change from flat rates to meter rates there were not over 30 consumers on the system. Now there are about 63 consumers attached to the system.

The utility property operated by applicant consists of a modern 60,000-gallon steel tank, and tower about 90 feet in height; a pumping plant and about 7½ miles of mains, mostly 2″ and 4″ diameter, together with real estate which is valued at $5,000.00 for the two parcels. The aggregate valuation as submitted by the company is approximately $20,000.00. Applicant is not asking at this time for a return upon its investment, but merely asks for a return of its operating expenses, so it is unnecessary to pass upon the valuation of the property.

Applicant is in the real estate business primarily and has only disposed of a small fraction of its holdings. Whatever rates it charges to the purchasers of its lands must be attractive, and for that reason it is only desired to have returned the expenses of operation. There would perhaps be a tendency to establish very low rates as an inducement to purchasers and then, after the land was disposed of, ask for an increase in the rates and make up for the lean years experienced. The Commission has observed the working out of such a program and is aware of the troubles arising therefrom. It is the duty of the Commission to permit such a schedule of rates to go into effect as may be considered average and not permit such a schedule as would be a burden to a corporation which had to rely solely upon the returns of the sale of its commodity for its existence.

J. W. Johnson, representing the consumers, stated that a flat rate of $1.00 per month had been promised the purchasers when lots were bought. Applicant objected to this statement and exhibited a form

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of deed given purchasers, which made no mention of water rates. If such a promise had been made it would only affect those who were on the tract before the present schedule of meter rates was established, and such consumers constitute less than one-half the total today.

The consumers presented a statement at the hearing, objecting to the schedule proposed by the company, and basing their opinion on certain water schedules in other California districts, and asked for a rate of 15 cents for the first 4,000 gallons and 10 cents per 1,000 gallons excess, with no minimum charge. The various schedules submitted were shown by the Commission's engineer not to be comparable with present situation.

Senator Diggs, appearing for himself, presented in testimony a bill for June water amounting to $58.45. He did not complain as to the metering of the system but considered that no return should be allowed upon the non-used property, as he considered it unfair. It was shown to him that the valuation of the property was not pertinent in this proceeding.

One of this Commission's hydraulic engineers has investigated the pressure and service conditions and has reported that the rate asked to be authorized is an average rate for comparable conditions found in this State. Our engineer has suggested that the schedule be based on cubic feet as a unit instead of gallons, and in that way the consumer may readily check his bill with the meter which reads in cubic feet.

The expenses of operating this utility for the first six months of this year, are as follows:

Miscellaneous supplies and expense	$7 85
Pumping labor at $35.00 per month	210 00
Collecting, etc., at $15.00 per month	90 00
Power	90 50
Insurance	33 75
Taxes	30 87
Lubricants	3 60
Miscellaneous, office, at $25.00 per month	150 00
Total	$616 57

The receipts of the utility for the same period, collected according to the schedule submitted for authorization, amount to $532.87, leaving a deficit for six months of $83.70.

Taking the month of June as illustrative of the use of water, I find:

18 used only the minimum of $1.00.
20 used between $1.00 and $2.00.
8 used between $2.00 and $3.00.
5 used between $3.00 and $4.00.
3 used between $4.00 and $5.00.
7 used over $5.00.

61 total.

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From this tabulation it will be shown that the minimum of $1.00 will not be a burden upon the consumers.

Having all the information before me and the testimony of the witnesses, and basing my opinion upon same, I hereby find as a fact that the following schedule of rates is a reasonable one for the North Sacramento Light and Water Company to charge its patrons in North Sacramento.

$1 00 per month, minimum, for 500 cubic feet or less.
10 per 100 cubic feet excess.
5 00 per month flat rate for public school and grounds situate near Del Paso boulevard.
2 50 per month flat rate for public school and grounds situate on Marysville road.

I submit the following form of order:

ORDER.

Application having been made by North Sacramento Light and Water Company for an order authorizing the charge and collection of certain water rates, and a public hearing having been had and basing its order on the foregoing findings of fact and the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that North Sacramento Light and Water Company be authorized to charge and collect the following rates from its patrons in North Sacramento, California:

$1 00 per month minimum for 500 cubic feet or less.
10 per 100 cubic feet excess.
5 00 per month, flat rate, for public school and grounds situate near Del Paso boulevard.
2 50 per month, flat rate, for public school and grounds situate on Marysville road.

It is further ordered that these rates shall be charged and take effect from and after August 1, 1915, providing North Sacramento Light and Water Company shall file with this Commission before fifteen (15) days from the date of this order a schedule of rates as herein outlined.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of August, 1915.

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DECISION No. 2680.

IN THE MATTER OF THE APPLICATION OF TUJUNGA WATER AND POWER COMPANY FOR AN INCREASE OF RATE TO BE CHARGED AND PAID TO IT FOR FURNISHING, DISTRIBUTING AND SELLING ITS WATER TO THE PUBLIC USERS THEREOF AND ESPECIALLY TO THE INHABITANTS OF THOSE COMMUNITIES KNOWN AS TUJUNGA TERRACE AND HANSEN HEIGHTS.

Application No. 1493.

Decided August 9, 1915.

The Commission heretofore in fixing a rate of $6.00 per acre per season for irrigation, which rate was to be paid in advance, did not make provision for a refund of portions of such advance payments when the Water company was unable to deliver the full amount of water paid for, supplemental order issued providing that such surplus amounts, if any, shall be accredited to consumer to apply upon next season's irrigating.

F. N. Davis, for Applicant.

James Donovan, for Dan and William Clemmons, Protestants.

J. Madison Carter, for Protestants in Tujunga Terrace and Hansen Heights.

W. F. Irvine and *Wm. H. Holmes,* for Eucalyptus Estates Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

After much investigation and several public hearings of the affairs of this company, the last being upon Application No. 1493 of the company for an increase in its rates, decision was finally rendered on the 8th of July, 1915.

The necessity for a supplemental order seems now to be apparent upon the following statement of facts, namely: The history of this company shows that there have been periods of drought in the past during which time it was impossible for the company to furnish the requisite amount of water for the number of acres under cultivation.

According to testimony submitted at the hearing of the application to increase rates there are, at present, approximately 500 acres under cultivation upon which a "stand-by" charge of $6.00 per acre was fixed and users required to declare the number of acres they would desire to irrigate in any irrigation season, and to pay said charge in advance in two installments on April 15th and July 15th.

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The necessity for the supplemental order arises from the fact that no provisions were made in the opinion and order issued in Application No. 1493, *supra*, protecting the users in the event the Water company could not furnish the amount of water paid for in advance, as outlined above. The Water company has undertaken to serve water to the extent that users declare their requirements, and the obligation is laid upon it to put itself in condition to render such service. Clearly, if it does not do so and furnishes only a part of the amount of water agreed upon and paid for in advance, it is entitled to retain the same proportion only of the amount collected under the preliminary or "stand-by" acreage charge.

FIRST SUPPLEMENTAL ORDER.

It is therefore ordered that should the Tujunga Water and Power Company fail to deliver to its consumers the full amount of water which such consumers have declared to be their requirements and for which they have paid in advance, said Tujunga Water and Power Company be, and it is hereby, ordered under such circumstances, to credit each consumer with the amount of water which the Tujunga Water and Power Company has failed to deliver to such consumer. The charge which has been made for the water not furnished shall be considered to be advance payment upon water required for the following irrigation season, and shall be so credited to the consumer upon the books of the company.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of August, 1915.

DECISION NO. 2681.

IN THE MATTER OF THE APPLICATION OF CARL F. SCHADER FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR THE ESTABLISHMENT OF RATES.

Application No. 1675.

Decided August 9, 1915.

Applicant, having been granted a certificate of public convenience and necessity permitting the construction of a water distributing system in the unincorporated territory of Calipatria, which order at the same time established a schedule of rates for such system, now presents a petition signed by all of his consumers requesting that a new schedule, differing from that heretofore established, be put into effect. Application granted.

Carl F. Schader, in propria persona.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL OPINION.

Carl F. Schader, applicant herein, having heretofore applied to this Commission for a certificate of public convenience and necessity authorizing him to construct and operate a water system in the unincorporated town of Calipatria, Imperial County, California, and requesting the Commission to establish rates to be charged for water for domestic use under said system, and a public hearing having been held and a certificate of public convenience and necessity issued to applicant, and the rates to be charged for domestic use having been fixed by the Commission; and applicant having now presented to the Commission a petition alleging to contain the signatures of each and every consumer of the system, certified and sworn to before a notary public, requesting the Commission to permit applicant, Carl F. Schader, to collect the rates set forth in the supplemental order which follows this opinion, which vary from those fixed by the Commission in its order dated July 9, 1915, but which are satisfactory to the consumers, as evidenced by the certified petition above referred to.

I submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

It is hereby ordered that applicant, Carl F. Schader, be, and he is, hereby authorized to charge and collect from the consumers of his water system situated in Calipatria, Imperial County, California, the following rates:

Tenement buildings, lodging houses or residences, 6 rooms or less, one toilet, one bath and water for irrigating one lot not to exceed 60 feet by 150 feet in size	$2.50 per month
Each additional room	.10 per month
Each additional bath, toilet or urinal	.25 per month
Horses or cows, one	.25 per month
Each additional horse or cow	.15 per month
Automobiles, each	.40 per month
Small stores and shops	2.50 per month
Hotels, base rate	2.50 per month
For each room having running water or bath	.25 per month
For all other rooms	.10 per month
Hotels, with dining room in connection, an additional charge of	4.00 per month
Restaurants and eating houses	4.00 per month
Business blocks, second floor, not exceeding five offices	2.50 per month
Each additional office	.10 per month
Stores, warehouses, butcher shops, confectionery shops, halls, billiard parlors, etc.	2.50 per month
Drug stores and bakeries	2.50 per month
Barber shops, one chair only	2.50 per month
Each additional chair	.25 per month
Photograph galleries	2.00 per month

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Laundries	$4.00 per month
Lumber yards	5.00 per month
Public baths, each	1.00 per month
Public water troughs, each	1.50 per month
Steam boilers or gas engines, per horsepower each	.30 per month
Soda fountains, in addition to base rate for store, each	1.00 per month
Cotton gins, for not more than six stand gin	5.00 per month
For each additional gin	.40 per month
Lime for building purposes, for each 100 square yards plastered	.50
For each 1,000 bricks laid	.15
For all purposes per barrel lime	.15
Cement for construction, each 100 feet construction work	.20
Concrete curb, per lineal foot	.20
Graded streets, water used in settling streets, per 100 lineal feet	1.00
Fire hydrants, each	1.00 per month
Water for irrigation of lots at 1 cent per 100 square feet lot area.	

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of August, 1915.

DECISION No. 2682.

IN THE MATTER OF THE APPLICATION OF QUINCY WESTERN RAILWAY COMPANY FOR PERMISSION TO RENEW CERTAIN PROMISSORY NOTES AND TO EXECUTE A MORTGAGE TO SECURE THE SAME.

Application No. 1805.

Decided August 9, 1915.

Applicant, having outstanding two promissory notes, one of the face value of $19,000.00, the other of $2,353.08, applies for and is granted permission to issue notes of a like face value in renewal thereof and to execute a mortgage covering its property to secure same, such notes to be issued for a period of not to exceed three years with interest at not to exceed 6 per cent.

R. K. Barrows, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

Quincy Western Railway Company operates a standard gauge railroad between Quincy Junction, on the Western Pacific, and Quincy, both in Plumas County, a distance of 5.24 miles. It has placed a mortgage upon its entire railway property, dated August 17, 1911, as

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security for two promissory notes; one dated August 11, 1911, payable to Calaveras Dredging Company, of the sum of $19,000.00, with interest at 6 per cent per annum; the other payable to H. C. Flournay, B. Schneider and E. Huskinson in the principal sum of $2,353.08, with interest at 6 per cent per annum.

Applicant states that the proceeds derived from these notes were used in the construction of its railway.

Applicant reports that there is at this date due, and unpaid, interest upon the note to Calaveras Dredging Company in the amount of $3,515.00, and on the second note in the amount of $339.07. In this proceeding Quincy Western Railway Company requests authority to refund, with new notes to mature in six months, its indebtedness to Calaveras Dredging Company and to H. C. Flournay, B. Schneider and E. Huskinson, and to add to the principal of the new notes the amount of delinquent interest.

Applicant also requests authority to execute a new mortgage as security for the new notes which it proposes to issue.

I recommend that applicant be granted authority to issue new notes to refund its present indebtedness represented by the aforesaid notes in the principal sum of $19,000.00 and in the principal sum of $2,353.08.

I recommend also that it be granted authority to execute a new mortgage of its properties to secure its indebtedness to Calaveras Dredging Company and to H. C. Flournay, B. Schneider and E. Huskinson. The applicant may issue new notes for a period of less than one year without the approval of this Commission.

Accordingly I submit the following form or order:

ORDER.

Quincy Western Railway Company, having applied to this Commission for authority to issue promissory notes and to execute a mortgage of its properties as specified in the foregoing opinion, and a hearing having been held, and it appearing that the purposes for which the applicant proposes to issue said notes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Quincy Western Railway Company be granted authority, and it is hereby granted authority, to issue its promissory notes as follows:

Note to Calaveras Dredging Company in the principal sum of $19,000.00, with interest at 6 per cent per annum, payable at a period not to exceed three years from date.

Note to H. C. Flournay, B. Schneider and E. Huskinson in the principal amount of $2,353.08, with interest at 6 per cent per annum, said note to be payable not to exceed three years from date.

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It is further ordered that Quincy Western Railway Company be granted authority, and it is hereby granted authority, to execute a mortgage of its properties to secure its indebtedness to Calaveras Dredging Company, H. C. Flournay, B. Schneider and E. Huskinson; said mortgage to be a first mortgage upon said properties and to replace the mortgage to which said railway is now subject.

The authority herein granted to the applicant to issue promissory notes is granted upon the following conditions and not otherwise:

1. The notes herein authorized to be issued shall be used to refund respectively notes payable to Calaveras Dredging Company in the principal sum of $19,000.00 and to H. C. Flournay, B. Schneider and E. Huskinson in the sum of $2,353.08.

2. Within thirty days after the notes herein authorized to be issued shall have been issued, the applicant shall report to this Commission stating the notes issued, the names of the payees, the principal, interest rate, and maturity of said notes.

3. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

4. The authority herein granted shall apply to such notes as shall have been issued on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of August, 1915.

DECISION NO. 2683.

IN THE MATTER OF THE APPLICATION OF OCEAN SHORE RAILROAD COMPANY TO DISCONTINUE THE MAINTENANCE OF AN AGENT AT ITS STATION OF SOUTH GRANADA.

Application No. 1641.

Decided August 9, 1915.

Applicant, operating under a considerable yearly deficit, in its endeavor to reduce operating expenses, applies for permission to discontinue maintaining an agent at its station of South Granada. An investigation shows that a considerable majority of shipments from this station consists of less than carload lots and that shippers, composed mostly of farmers, would find considerable difficulty in forwarding their products. Applicant permitted to discontinue this agency, provided it shall maintain, until further order of this Commission, a representative who shall look out for outgoing and incoming shipments immediately preceding and following the arrival of the two freight trains serving this station.

I. N. Randall, for Applicant.

Chas. W. Fay, for Protestant.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of the Ocean Shore Railroad Company for permission to discontinue the maintenance of an agent at its station of South Granada, it being alleged that the revenue derived from such station does not justify the continuance of an agent at this point, and that the present financial condition of the applicant is such that the most rigid economy is necessary in the operation of its railroad. A public hearing was held on August 3, 1915, and the matter is now ready for decision.

The station of South Granada is located 27.6 miles from San Francisco and the nearest agency station is Half Moon, which is 2.6 miles south of the station of South Granada. The adjacent country tributary to this station is an agricultural section devoted to the raising of vegetables and garden truck, although some hay and grain is produced. The vegetables are shipped principally in less than carload quantities and constitute the major portion of the freight shipments originating at this point. Many of the shippers are farmers who rent their lands from owners of large holdings, and, as many of the farmers are not familiar with the routine of shipping, an agent at this point has been of material assistance in the handling of their outgoing business. The carload business is of slight volume, no carload shipments having been forwarded during the six months ending June 30, 1915, and but thirteen cars having been received during the same period; one of lumber, ten of manure and two of rock for highway improvement.

The general financial condition of the Ocean Shore Railroad as reflected by a statement filed as an exhibit in this application indicates that a heavy loss has resulted from the operation of the railroad for the six months period ending June 30, 1915, and the anxiety of the officials to conserve all the revenue possible is therefore apparent.

The business transacted at South Granada station during the six months period ending June 30, 1915, shows the following result:

	Tonnage	Revenue
Freight received—		
Less than carload	496,120	$639 83
Carloads—13 cars	920,540	247 35
Freight forwarded—		
Less than carload	793,820	1,200 45
Carloads—none		
Totals	2,210,480	$2,087 63

There are no tickets sold at the station of South Granada and the passenger revenue received at this station is handled by commutation

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books purchased in San Francisco or from other agencies, and by passenger train conductors in their train collections.

The agent serving South Granada station has divided his time between that station and the station of Moss Beach and receives a salary of $85.00 per month, $50.00 applicable against Moss Beach and $35.00 against South Granada.

The cost of maintaining the agency of South Granada is therefore approximately 10 per cent of the revenue derived from the freight business originating at and destined to this station. The Ocean Shore Railroad Company proposes to effect a saving in agency expense by combining the agency work at Moss Beach station with that of Farralone station, thereby reducing expenses by about $75.00 per month. As no passenger business is handled through the agency at South Granada, there being no tickets sold at this point, the services of an agent are only necessary as regards freight shipments, and as but one regular freight train in each direction is being operated at the present time, scheduled to pass South Granada southbound at 8:50 a.m. and northbound at 11:06 a.m., the presence of an agent or representative of the applicant is only necessary for a limited portion of each day.

While the financial condition of the applicant is such that every effort possible should be made toward the saving of unnecessary expense in the operation of its railroad, some consideration is due the shippers and receivers of freight at South Granada station, and it was suggested at the hearing of this application that arrangements be made by the applicant to secure the services of some representative who would be present at the station during such hours as were necessary to serve the regular freight trains and who would assist shippers in the preparation of their shipping documents, and also handle incoming and outgoing freight. It was agreed by applicant's representative at the hearing that a trial of such suggested method would be satisfactory to the company and that also the interests of the shippers and receivers of freight would be protected by the suggested arrangement.

I, therefore, recommend the following form of order:

ORDER.

The Ocean Shore Railroad Company, having made application to this Commission for permission to discontinue the maintenance of an agent at its station of South Granada for the reason that the present financial condition of the applicant is such that extreme economy is necessary, a public hearing having been held and the Commission being fully advised in the premises,

It is hereby ordered that the applicant, Ocean Shore Railroad Company, be permitted to discontinue the maintenance of an agent at its

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station of South Granada upon the following conditions, and not otherwise:

1. The applicant, Ocean Shore Railroad Company, shall upon the discontinuance of an agent at its station of South Granada, employ a competent representative for a period of ninety days, and thereafter until the further order of this Commission, whose duties shall include the rendering of assistance to the freight shippers at the station of South Granada in the preparation of shipping documents; the care of incoming and outgoing freight shipments and the keeping open of the freight station for the receiving and delivery of shipments between the hours of 8:45 a.m. and 11:15 a.m., or immediately prior to and after the arrival and departure of the regularly scheduled freight trains serving this station.

2. The applicant, Ocean Shore Railroad Company, will keep a true and accurate record of the business transacted at its station of South Granada for a period of ninety days after the installation of the representative, as above provided, and will submit such record to this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of August, 1915.

DECISION NO. 2684.

MASCOT OIL COMPANY

vs.

SOUTHERN PACIFIC COMPANY ET AL.

Case No. 366.

Decided August 10, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The complainant in the action entitled as above having, on August 7, 1915, made written request that this proceeding be dismissed,

It is hereby ordered that the same be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 10th day of August, 1915.

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DECISION NO. 2685.

IN THE MATTER OF THE APPLICATION OF IMPERIAL GRAIN AND WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE SALE OF ITS CAPITAL STOCK.

Application No. 1789.

Decided August 10, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission in an order dated July 31, 1915 (Decision No. 2648), authorized Imperial Grain and Warehouse Company, in the above entitled matter, to issue $5,000.00 par value of capital stock for the purpose of enlarging a warehouse at Calipatria and building a warehouse at Rockwood; and

Whereas applicant, in a letter dated August 3, 1915, asks for authority to use part of the proceeds to be obtained from the sale of the stock heretofore authorized by this Commission to pay advances by Newmark Grain Company, said advances having been used, according to applicant's report, to enlarge and construct its warehouse at Calipatria; and good cause appearing,

It is hereby ordered that this Commission's order dated July 31, 1915 (Decision No. 2648), be and hereby is amended so as to permit applicant to use the proceeds to be obtained from the sale of stock authorized by an order dated July 31, 1915 (Decision No. 2648), to pay advances made by Newmark Grain Company for the purpose of constructing and enlarging its warehouse located at Calipatria.

It is hereby further ordered that this Commission's order dated July 31, 1915 (Decision No. 2648), shall remain in full force and effect, except as modified by this first supplemental order in the above entitled matter.

Dated at San Francisco, California, this 10th day of August, 1915.

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DECISION NO. 2686.

IN THE MATTER OF THE APPLICATION OF JAMES A. GUNN, JR.

Application No. 1713.

Decided August 10, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

James A. Gunn, having on August 9, 1915, made written request to this Commission that the above entitled application be dismissed without prejudice,

It is hereby ordered that the above entitled application be, and the same is, hereby dismissed without prejudice.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of August, 1915.

DECISION NO. 2687.

IN THE MATTER OF THE APPLICATION OF W. M. BROWNING FOR AN ORDER AUTHORIZING THE TRANSFER OF WATER PLANT AT BELVIDERE TO BELVIDERE MUTUAL ASSOCIATION, C. A. ERICSON, TRUSTEE.

Application No. 1833.

Decided August 12, 1915.

REPORT OF THE COMMISSION.

Good cause appearing,

It is hereby ordered that W. M. Browning, owner of a public utility water system at Belvidere, Los Angeles County, California, be and he is hereby authorized to transfer and convey said system to C. A. Ericson, trustee for Belvidere Mutual Association.

Said system is more particularly described as follows:

All that property situate in the Belvidere tract, county of Los Angeles, State of California, being Lot No. 2 in Block B, of Belvidere

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tract, in the Rancho San Pedro, county of Los Angeles, State of California, as per map recorded in Book 10, page 95 of Maps, in the office of the county recorder of Los Angeles County, together with all appurtenances and privileges, constituting the public utility water property formerly owned by Belvidere Land Company, and deeded by said company to W. M. Browning.

A certified copy of the instrument of conveyance shall be filed with the Railroad Commission within ten days after the execution of the same.

Dated at San Francisco, California, this 12th day of August, 1915.

Decision No. 2688, grade crossing; not printed. See end of volume.

DECISION No. 2689.

IN THE MATTER OF THE PRACTICE OF WATER, GAS, ELECTRIC AND TELEPHONE UTILITIES REQUIRING DEPOSITS BEFORE RENDERING SERVICE.

Case No. 683.

Decided August 12, 1915.

This investigation was instituted upon the Commission's own initiative with a view to establishing uniform practices among the various classes of utilities operating in this State as regards charges, deposits, contracts or guarantees for service, service connections, and extensions. The subject-matter was considered under four heads, namely, Service Charges, Service Connection Charges, Charges for Extensions and Modification of Rules, which subjects were divided into 18 subsections and after an exhaustive review of authorities, a table embodying 18 rules was approved by the Commission and established to become effective October 11, 1915. Briefly the rules established were as follows:

Service Charges: 1. Utilities may require a prospective consumer to establish credit before rendering service, such credit shall be deemed established if the consumer (1) owns the premises; (2) makes a cash deposit; (3) furnishes a guarantee satisfactory to the utility; (4) has paid all bills promptly for a period of 12 months prior to the effective date of this order. 2. If a deposit be made it shall not exceed twice the average periodic bill of that particular class of consumers paying same, or for domestic or residence monthly service, not to exceed $2.50. 3. Consumers receiving service under other than cash deposits who default in payments may be required to guarantee future bills by cash deposits, though service can not be discontinued through lack of deposit, until the specified time has elapsed as required under notice of discontinuance clause. 4. Consumers with cash deposits defaulting in payment: Amount of bill may be subtracted from deposit and demand made that deposit be restored to the original amount, though service can not be discontinued until the deposit has been entirely absorbed and required time notice given.

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Time notice of discontinuance: 5. A written notice of discontinuance must be given consumers when bills are normally rendered monthly, of 15 days, weekly bills, 4 days, fortnightly bills, 7 days, over one month, 30 days. 6. No service can be discontinued account nonpayment of bills for metered or measured service theretofore delivered. 7. Telephone utilities may extend telegraph and toll line service to all patrons or to the extent of such deposits as patrons may desire to make.

Unmetered service: 8. Utilities rendering service at flat rates may demand payment in advance for the period at which bills are normally rendered, but can not demand guarantees or deposits for service to be rendered in the future. 9. Time limits for discontinuance of unmeasured service by written notice same as for measured service.

Return of deposits: 10. Deposits for measured service remaining unimpaired for twelve months shall be returned to depositor; upon closing accounts, balance of deposit, after all bills due have been deducted shall be promptly returned to depositor. 11. Six per cent interest shall be paid on all deposits for measured service excepting where such service is discontinued in less than twelve months.

Contracts: 12. Utilities shall not require consumers to sign contracts for service, excepting extensions in unincorporated territory which shall be open to further discussion, and in such cases in incorporated territory as the Commission shall direct, provided that this rule shall not prohibit the requirement of written applications for service.

Service connections: 13. Utilities shall make all service connections from their mains or lines along public highways to the property lines of prospective consumers abutting upon such highway, at their own expense, provided that this connection may be refused, subject to review by the Commission, if the utility believes such extension shall not be used for a reasonable period of time. 14. Cost of connecting or re-connecting service extensions may be provided for in the rules of the utility by, (1) charging directly to the new consumer, (2) prorating over periodic payments for service, (3) by merging into general operating expenses. No cancellation charge whatever shall be made.

Extensions: 15. Utilities shall make all required street extensions in municipalities at their own expense excepting when such extensions appear to be unreasonable or unduly expensive, the matter may then be submitted to the Commission. 16. In unincorporated territory the utilities shall make such reasonable extensions at their own expense as may be agreed upon with the applicant for service, provided that when an extension is deemed unduly burdensome, it may be referred to the Commission for informal adjustment. 17. When an applicant for service pays the whole or portions of the cost of an extension, it shall be considered as a loan to be repaid under non-discriminatory rules with interest at 6 per cent.

Modification of rules: 18. Utilities may establish uniform non-discriminatory rules more favorable to consumers than the rules herein prescribed. The rules herein established to take precedence over all other rules heretofore established which may be in conflict herewith. All rules and regulations filed by utilities inconsistent with the rules herein established, shall be revised and refiled within sixty days. All deposits at present held by utilities from consumers who have paid all bills promptly for a period of twelve months last past, shall be returned to the depositors. If the rules herein established result in hardship when applied to any special facts, application may be made for modification.

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(WATER UTILITIES.)

H. P. Brown, for Lone Oak Canal Company.

Joseph Haber, Jr., for Marin Water and Power Company, Willits Water and Power Company, Western Water Company, Consumers Water Company, Domestic Water Company.

Joy A. Winans, for Eagle Rock Water Company.

A. C. Greene, for Spring Valley Water Company.

Albert Raymond, for South San Francisco Water Company.

Joseph Shaw, for Washington Water and Light Company, Oak Park Water Company.

O. C. Heck, for Heck Brothers.

Stanley J. Bell, for Union Water Company of California.

Henry Goosen, in propria persona.

(GAS AND ELECTRIC UTILITIES.)

Wm. B. Bosley and *C. P. Cutten,* for Pacific Gas and Electric Company.

H. H. Trowbridge, for Southern California Edison Company, Long Beach Consolidated Gas Company, Santa Barbara Gas and Electric Company.

S. M. Haskins, for Pacific Light and Power Corporation.

Short & Sutherland, for San Joaquin Light and Power Corporation.

Chaffee E. Hall, for Great Western Power Company.

M. S. Wilson, for Southern Counties Gas Company.

Allen Chickering, for San Diego Consolidated Gas and Electric Company.

Paul Overton, for Los Angeles Gas and Electric Corporation.

L. P. Lowe, for Economic Gas Company.

H. F. Jackson, for Coast Valleys Gas and Electric Company.

H. C. Keyes, for Sacramento Gas Company.

Farnsworth & McClure, for Mt. Whitney Power and Electric Company.

(TELEPHONE UTILITIES.)

James T. Shaw, for Pacific Telephone and Telegraph Company.

E. P. Morphy, for Home Telephone and Telegraph Company of Los Angeles, Santa Monica Bay Home Telephone Company.

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George B. Ellis, for Union Home Telephone and Telegraph Company.

Charles A. Rolfe and *Arthur Wright*, for Southwestern Home Telephone Company.

J. O. Jensen, for Los Gatos Telephone Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This proceeding was instituted by the Railroad Commission on its own motion for the purpose of investigating the rules, regulations and practices of water, gas, electric and telephone utilities in connection with charges and practices of various kinds as conditions precedent to service. Speaking in general terms, the principal matters under investigation herein are charges, deposits, contracts and guarantees for (1) service; (2) service connections; (3) extensions.

A large number of complaints, both formal and informal, are constantly being made to this Commission against such rules, regulations and practices. It is hoped that a comprehensive investigation will not only be advantageous to the utilities and their customers, but will also materially lighten the labors of this Commission in the disposition of such complaints.

This proceeding was instituted on September 23, 1914. Notice was served on each water, gas, electric and telephone utility in the State subject to the Commission's jurisdiction with reference to the subject matter of this inquiry or any portion thereof. A preliminary hearing was held in San Francisco on November 23, 1914, at which time argument was presented by the utilities in support of various rules, regulations and practices.

It was stipulated at the preliminary hearing that the files relating to all informal complaints before the Commission relating to the subject matter of this inquiry might be considered as being in evidence in this proceeding and that the numbers of these informal complaints should be inserted in the record. It was also agreed that the Commission should send to each utility a circular letter requesting information concerning the subject matter of this inquiry, and that this letter and answers thereto be considered in evidence herein.

Thereafter, on December 5, 1914, the Commission mailed to each utility a "Request for Information," asking that each utility which desired to continue any charge or deposit as condition precedent to service, furnish in detail the following information:

1. What practice, if any, does your utility pursue to secure the payment of your monthly bills, and at what time was this practice instituted?

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2. What deposits or charges, if any, does your utility demand for so-called service connections, such as the charges of certain water companies for the service connection, and when did your utility first adopt such practice?

3. What practices, if any, does your utility pursue with reference to demanding charges or deposits of any kind as conditions precedent to the construction of extensions, and when was such practice first adopted? Make this explanation full and complete.

4. What other charges or deposits, if any, does your utility make as a condition precedent to rendering service and when were such charges or deposits first demanded?

5. If your utility desires to continue to make any charge or require any deposit of the kind hereinbefore referred to, state the reasons in full in support of your desire, together with the facts, if any, on which you rely in support thereof, and such authorities, if any, as you can furnish on the legal questions, if any, involved.

6. What rule or rules does your utility consider equitable to be adopted with reference to any or all classes of charges or deposits as conditions precedent to service?

Replies were received from 120 water utilities, 72 gas and electric utilities, and 50 telephone utilities. These replies, by stipulation, are all in evidence in this proceeding.

The following utilities either incorporated with their replies, or prepared separately in the form of briefs, statements of their views on points of law:

Home Telephone and Telegraph Company (Los Angeles).
Los Angeles Gas and Electric Corporation.
Pacific Gas and Electric Company.
Pacific Telephone and Telegraph Company.
San Diego Consolidated Gas and Electric Company.
San Joaquin Light and Power Corporation.
Southern California Gas Company.
Southern Sierras Power Company.
South Los Angeles Water Company.
Southwestern Home Telephone Company.
Union Home Telephone and Telegraph Corporation.
Western States Gas and Electric Company.
West Side Gas Company.

A number of utilities having expressed a desire to present further evidence, an adjourned hearing was held in San Francisco on June 4, 1915. At this hearing, the Commission introduced as Railroad Commission's Exhibits Nos. 1, 2, and 3, statements containing the numbers

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of the informal complaints filed with this Commission, referring to the subject matter of this proceeding, against the gas and electric utilities, the water utilities and the telephone utilities, respectively. The exhibits show 410 complaints of this character against gas and electric utilities, 141 against water utilities and 83 against telephone utilities.

At the hearing of June 4, 1915, the utilities completed the presentation of their additional evidence and the case was submitted.

The subject matter of this inquiry will be discussed under the following general heads: (I) Service Charges; (II) Service Connection Charges; (III) Charges for Extensions, and (IV) Modification of Rules.

I.

SERVICE CHARGES.

A large number of complaints have been made to the Commission concerning rules, regulations and practices of utilities requiring the making of deposits, the giving of guaranties, and the signing of contracts to insure payment for service to be delivered in the future, and payments in advance for service.

In considering this subject, a distinction must be made between metered and unmetered (flat rate) service.

This branch of the inquiry will be considered under the following outline:

A.

METERED SERVICE.

1. Right of utility to protection in re-metered service to be delivered.
2. Amount of deposits.
3. Procedure if consumer who has established his credit by showing that he owns the premises, or by furnishing a guarantor, or by paying all his bills promptly during the twelve months prior to the effective date of the order herein, becomes delinquent.
4. Procedure if consumer who has made deposit becomes delinquent.
5. Minimum notice before utility may discontinue metered service.
6. Discontinuance of service for failure to pay delinquent bills.
7. Telegrams and long distance telephone messages.

B.

UNMETERED SERVICE.

8. Right of utility to protection in re-unmetered service to be delivered.
9. Minimum notice before utility may discontinue unmetered service.

C.

RETURN OF DEPOSITS.

10. Return of deposits after one year or on closing.
11. Interest on deposits.

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D.

CONTRACTS.

12. Contracts.

1. Right of Utility to Protection in re Metered Service to be Delivered.

The courts have uniformly held that a utility has the right to take reasonable protective measures to insure payment for service to be delivered in the future. It will be helpful to refer to the decisions on this point affecting water, gas, electric and telephone utilities.

The leading decisions have been rendered with reference to gas utilities. In *Shepard* vs. *Milwaukee Gas Light Company,* 6 Wis. 539, 70 Am. Dec. 479, the Supreme Court of Wisconsin upheld as reasonable a rule of a gas utility requiring the consumer to make a deposit or give other security for the payment of gas thereafter to be delivered to him. In *Williams* vs. *The Mutual Gas Company,* 52 Mich. 499, 18 N. W. 236, the Supreme Court of Michigan upheld as reasonable a demand of a gas utility from a hotel keeper that he make a deposit of $100.00 to insure the payment of gas bills amounting to approximately $60.00 per week. In *Owensboro Gaslight Company* vs. *Hildebrand,* 19 Ky. L. Rep. 983, 42 S. W. 351, the Supreme Court of Kentucky assumed the general right of gas and electric utilities to require deposits, but held that a utility can not lawfully make such demand from particular consumers while not making similar demands from other consumers similarly situated. In *Cedar Rapids Gaslight Company* vs. *City of Cedar Rapids,* 144 Iowa, 426, 120 N. W. 966, the Supreme Court of Iowa held that gas utilities may establish rules exacting payment in advance in reasonable amounts or the deposit of security. In *Phelan* vs. *Boone Gas Company,* 147 Iowa, 626, 125 N. W. 208, the Supreme Court of Iowa, while holding that a gas utility may make and enforce a general rule providing for reasonable cash deposits or the signature of a person known to be responsible, decided that the utility acted beyond its rights in making a special demand for a deposit, for petty spite, from a consumer who had won a case in court from the utility. It will not be necessary to consider a number of other cases based on specific statutory provisions.

The same rule has been established with reference to water utilities. In *Turner* vs. *Revere Water Company,* 171 Mass. 336, 50 N. E. 634, 40 L. R. A. 657, the Supreme Court of Massachusetts said, by way of *dictum,* that water utilities may demand deposits if they do not know the consumer. In *Harbison* vs. *Knoxville Water Company,* 103 Tenn. 421, 53 S. W. 993, the Court upheld a rule of a water utility providing for the payment in advance of a quarter's rent for water supplied for domestic purposes. In *State* vs. *Butte City Water Company,* 18 Mont.

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199, 44 Pac. 966, the Supreme Court of Montana said, by way of *dictum,* that a water utility may demand payment in advance for a reasonable time.

The leading case with reference to telephone utilities is *Southwestern Telegraph and Telephone Company* vs. *Danaher,* decided by the Supreme Court of the United States on June 21, 1915, in which case the Court said: "It is uniformly held that a regulation requiring payment in advance or a fair deposit to secure payment is reasonable." For other cases containing similar language with reference to telephone utilities, see *Buffalo County Telephone Company* vs. *Turner,* 82 Neb. 841, 118 N. W. 1064 and *Malochee* vs. *Great Southern Telephone and Telegraph Company,* 49 La. Ann. 1690, 22 So. 922.

A number of state commissions have rendered illuminating decisions establishing the same principle:

Cole vs. *Ft. Scott and Nevada Light, Heat, Water and Power Company,* Volume 1, Advance Sheet No. 2, pp. 209, 253, Reports of Public Service Commission of Missouri, decided on November 17, 1913.

In re Easton Gas Works and Eastern Pennsylvania Power Company of New Jersey, decided by Board of Public Utility Commissioners of New Jersey on February 20, 1914.

McAlester Publishing Company vs. *Choctaw Railway and Lighting Company,* decided by Oklahoma Corporation Commission on November 23, 1911.

Cauffiel vs. *Citizen's Light, Heat and Power Company,* decided by Public Service Commission of Pennsylvania on October 6, 1914.

Berend vs. *Wisconsin Telephone Company,* 4 W. R. C. R. 150, decided by the Railroad Commission of Wisconsin on September 15, 1909.

In re Refusal of Farmers Union Telephone Company to furnish service to William Lemcke, 13 W. R. C. R. 399, decided by the Railroad Commission of Wisconsin on December 9, 1913.

In re Refusal of Service by Madison Gas and Electric Company to F. M. Wylie, 13 W. R. C. R. 518, decided by the Railroad Commission of Wisconsin on January 2, 1914.

The question is frequently asked: "Why does a water, gas, electric or telephone utility have the right to demand payment in advance, or deposits or other security to insure payment for service to be delivered, while the ordinary tradesman does not make similar demands?"

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The answer is that the condition of the tradesman is entirely different from that of the utility. The tradesman sells only to whom he pleases. If he does not like a person or believes that his credit is not good, he is free to demand cash on delivery or to refuse to sell at all. The utility, on the other hand, is obliged to supply its service to all who demand it within the area to which the utility's obligations extend. As the law now stands, a baker may refuse to sell bread, but a water utility may not refuse to sell water to any one who complies with its reasonable regulations. Water, gas, electric and telephone service have come to be regarded largely as public necessities, and they may not be denied even to the impecunious or to the financially irresponsible members of the public. Hence, unless some measure of protection is accorded the utility, it will find itself in the position of having delivered, under compulsion, service for which it receives no pay. Such a condition not merely increases the ability of the utility to perform effectively its duties to the public, but also affects injuriously those consumers who pay their bills and who, in the last analysis, will have their rates increased by the failure of other consumers to pay their bills.

Conceding that some measure should be devised to protect the utility and the consumer who pays his bills, what rule or regulation would be reasonable? The bare statement that protection should be accorded, is by no means synonymous with a declaration that this or that or the other means to attain this end must necessarily be adopted. The returns filed by the utilities in this proceeding show that some require payments in advance or guarantees, while other utilities have made no such demands; that some utilities require either deposits or other guarantees in all cases, while others require them only if the applicant does not own the property; and that other utilities make no requirements even of non-property owners unless they are unknown or are known to be financially irresponsible. To say that a utility must necessarily have the right to demand a deposit in all cases of metered service is to confuse a means with the end, and to regard only one of the paths which lead to the goal instead of keeping the eye steadfastly directed to the goal itself.

In considering what rule or regulation will be reasonable, consideration must also be given to the desirability of subjecting the general mass of consumers to only such burdens as are reasonably necessary to the accomplishment of the end in view. A rule requiring each consumer to make and maintain a deposit large enough to insure at all times the payment of all his bills would enable the utility to make 100 per cent collections, but such rule would be unjust because it would subject the great body of the consumers to burdens far greater than are reasonably necessary. As was said by the Supreme Court of Iowa

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in *Cedar Rapids Gaslight Company* vs. *City of Cedar Rapids,* 120 N. W. 966, 971:

> "The company may not base a rule on the theory that the people as a whole are dishonest, but it has the right to adopt a rule which, while giving the honest citizen what he pays for, will prevent the dishonest from getting that which he will never pay for."

Another requisite of the rule or regulation to be adopted is that it shall reduce to a minimum the possibility of discrimination by the utility in its application. A rule which permits a utility to demand a deposit from one applicant for service and to deliver service to another applicant, in exactly the same condition as the first one, without a deposit, is not a desirable rule. Many of the complaints which have been made to the Commission concerning the subject-matter of this proceeding have been complaints of discrimination. This objection could be removed by a rule requiring each applicant for metered service to make a deposit, but such a rule, as already suggested, would be inadvisable because it would compel deposits in many cases in which they are entirely unnecessary. Nearly every rule which has hitherto been suggested is subject to the objection that it permits wide discrimination by the utility.

The only feasible method which occurs to me to minimize the possibility of discrimination by the utility is to place the initiative on the consumer and not on the utility. The utility is entitled to be reasonably safeguarded and to this end to have the consumer's credit established before service is delivered. This credit may be established by the consumer in one of several methods. If he owns the property, that fact alone should *prima facie* establish his credit. If he does not own the property, he can establish his credit by making a uniform deposit to be established for such cases. If he does not own the property and does not desire to make the deposit, he can establish his credit by presenting a guaranty for the payment of his bills, signed by a guarantor satisfactory to the utility. If he has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, his credit will also be deemed established. If the applicant is thus permitted to take the initiative and to establish his credit as herein suggested, the cases in which a deposit will be presented will be reduced to a minimum, while the utility and the consumers who pay their bills will secure the maximum protection to which they are reasonably entitled.

The return of deposits after a specified period and the applicability of deposits to service rendered to the same consumer at different successive premises will be considered in connection with other rules.

With reference to all rules herein established, the utilities may, if they so desire, as provided in Rule 18 herein, establish and enforce

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uniform, non-discriminatory rules more favorable to their consumers than the rules herein prescribed. A utility is not obligated to exact the full measure of that to which it is lawfully entitled, provided that discrimination does not ensue.

I suggest the following rule as Rule 1:

RULE 1.

A water, gas, electric or telephone utility may, under uniform, non-discriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

2. Amount of Deposits.

In the relatively few cases in which deposits will henceforth be presented, it will be necessary to determine the amount of the deposit. No uniform rule on this subject is practiced in this state nor has any been adopted elsewhere.

Where service is metered or measured and is billed for monthly, the bill usually reaches the consumer within ten days after the meter is read. Another ten days or more is usually allowed for collection, after which time various practices are followed with reference to discontinuance of service. Generally the consumer has received service at least two months before his service is discontinued. A reasonable cash deposit for the consumers within any given class under a system of monthly bills would thus appear to be twice the estimated average monthly bill of the consumers within that class.

It is not feasible to estimate the average monthly bill for each individual consumer. This is a case in which the law of averages must govern. All consumers offering deposits within the same class should pay the same deposit. The utility should have the right to make such classifications of consumers as may be necessary to prevent small consumers from bearing the burdens in this respect of large consumers. The rule herein suggested will eliminate the exercise of individual discretion on the part of the utility's employees and will minimize complaints of discrimination.

The consumers of domestic or residence metered service of water, gas, electric and telephone utilities who establish their credit by furnishing deposits will generally not be the larger consumers. To establish the amount of a deposit by taking the average consumption of all domestic

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or residence consumers would obviously be unfair for the reason that such average would be considerably in excess of the average bills of the consumers who present deposits. Bearing in mind the actual consumption of the consumers who will present deposits, I find that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities should not exceed $2.50.

In case of certain larger consumptions, the utility may desire to establish a schedule of more frequent collections and to demand a deposit which will be reasonable under the circumstances, not exceeding the average bill for twice the period for which collections are made.

I suggest the following rule as Rule 2:

RULE 2.

If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided, that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities shall not exceed $2.50.

3. Procedure if Consumer Who Has Initially Established His Credit by Showing that he Owns the Premises, or by Furnishing a Guarantor, or by Paying All His Bills to the Utility Promptly during the Twelve Months Prior to the Effective Date of the Order Herein Becomes Delinquent.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the date of the order herein, later fails to pay his bills, the utility may demand as a condition precedent to further service and as a guaranty for the payment of bills thereafter to be incurred a cash deposit in the amount specified in Rule 2. Service should not be discontinued until the expiration of the time specified in Rule 5 herein after notice of intention to discontinue service unless such demand is complied with. The question of the recovery of back bills will be considered in connection with Rule 6.

I suggest the following rule as Rule 3:

RULE 3.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by

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Rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in Rule 5 herein after notice of intention to discontinue service unless such demand is complied with.

4. Procedure if Consumer Who Has Made Deposit Becomes Delinquent.

If a consumer whose bills for metered or measured service are protected by a cash deposit fails to pay his bill, the utility may apply such portion of his deposit as is necessary to liquidate the bill and may at the same time require that the deposit be restored to its original amount. If the deposit is not restored by the time it has been completely absorbed, service may be discontinued, provided that notice of intention so to do as specified in Rule 5 herein has theretofore been given. In *Reincke* vs. *Public Service Gas Company,* decided on April 20, 1914, the Board of Public Utility Commissioners of New Jersey very properly held that the utility can not discontinue service as long as it still has in its possession a portion of the consumer's deposit.

I suggest the following rule as Rule 4:

RULE 4.

If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill and may require that the deposit be restored to its original amount; provided that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in Rule 5 herein.

5. Minimum Notice Before Utility May Discontinue Metered Service.

Occasional complaints have been made to the Commission that utilities have arbitrarily discontinued service without notifying the consumer that they intended to do so. Fair dealing requires that the consumer be given reasonable notice of the utility's intention to discontinue service, so that he can make every reasonable effort to comply in time with the utility's lawful demands. Particular care should be taken not to injure irrigation consumers whose crops frequently may be ruined if water or electric energy to pump water is shut off.

I suggest the following rule as Rule 5:

RULE 5.

A water, gas, electric or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the

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bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

6. Discontinuance of Service for Failure to Pay Delinquent Bills.

If a utility avails itself of the right herein recognized of requiring all consumers to establish their credit before metered or measured service is delivered, the utility will have only few delinquent bills except those which it voluntarily permits to accrue. Nevertheless in such cases and also in cases in which the utility does not choose to avail itself of the right to compel applicants to establish their credit, the question whether the utility has the right to discontinue service by reason of the failure to pay a delinquent bill may arise.

On the one hand, it is urged by the utility that it should be accorded this right as the most efficient method of collecting its bills. Emphasis is laid on the fact that these bills are usually small, that the expense incident to collecting them by legal process is relatively high and that persons failing to pay such bills are frequently execution proof.

On the other hand, it is contended that there is frequently an honest dispute with reference to a bill and that if the utility has the right to discontinue service when payment is not made, the consumer is placed at an unfair disadvantage. The services of water, gas, electric and telephone utilities have come to be regarded largely as necessaries of life, so that the consumer feels compelled to accede to the utility's demand even though he considers it unjust. A number of such cases have come to the Commission's attention. It is also urged that the utility's public duty requires the delivery of service on tender of the established rates or deposit, irrespective of real or alleged delinquencies.

In considering this question, I shall refer first to statutory provisions and decisions in California and then to the law in other states.

The law in California as affects water utilities was established in the case of *Crow* vs. *San Joaquin and Kings River Canal and Irrigation Company*, 130 Cal. 309. In that case an action was brought to recover damages for the refusal on the part of the defendant water company to furnish water to the plaintiff for the irrigation season of 1896, on tender by the plaintiff of the regular rates therefor. The water company justified its refusal on the ground that the plaintiff was indebted to it for water furnished to him in the years 1893 and 1894, and that under the regulations of the company, to which the plaintiff had subscribed, the payment of all dues and claims for previous service was

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made a condition precedent to the right to receive further water. At page 313, the court points out that there was no consideration for this rule or regulation, for the reason that it was the duty of the defendant water company to furnish the plaintiff with water, whether he agreed to these regulations or not. Referring to this point, the court says, at page 313:

> "The use of water, in this state, appropriated 'for sale, rental, or distribution' is a public use (Const. art. XIV, sec. 1), and by the act of March 12, 1885 (Stats. 1885, p. 96), enacted to carry out this provision of the constitution, it is made the duty of the company administering such use, 'upon demand therefor and tender in money of the established water rates * * * to sell, rent, or distribute such water' to the inhabitants of the county 'at the established rates regulated and fixed therefor, as in this act provided, whether so fixed by the board of supervisors or otherwise,' etc. And it is further provided in said act that for failure to do so an action may be maintained for 'damages to the extent of the actual injury sustained.' By section 552 of the Civil Code the same duties are also imposed upon such corporations in favor of those to whom water had been previously sold by such company. (*Price* vs. *Riverside Land, etc. Co.*, 56 Cal. 431; *McCrary* vs. *Beaudry*, 67 Cal. 120; *Merrill* vs. *South Side Irri. Co.*, 112 Cal. 435, 436.) It was therefore the duty of the defendant, under the law as established in this state, to furnish the plaintiff water upon a tender of the established rates; and this rule precludes the idea that any other duties can be prescribed or imposed, except the tender of the rate, as a condition for supplying water, as required by law."

The conclusion of the *Crow* case to the effect that it is the duty of water utilities in this State to supply water upon tender of the established rates in advance, notwithstanding the failure to pay a back bill, was confirmed in *Leavitt* vs. *Lassen Irrigation Co.*, 157 Cal. 82, at page 93, where the court says:

> "In *Crow* vs. *San Joaquin, etc., Canal Company*, 130 Cal. 309, it was held that a consumer did not deprive himself of the right to take water under the rate established by law by reason of his refusal to pay under and in accordance with the terms of his contract."

The same conclusion is reached in *San Joaquin and Kings River Canal and Irrigation Co.* vs. *Stanislaus County*, 191 Fed. 875, 892.

With reference to gas and electric utilities, the subject was heretofore covered by section 632 of the Civil Code, enacted in 1905, and reading as follows:

> "All gas and electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes,

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wires, fittings or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity."

This section, however, was impliedly repealed with reference to all territory in which this Commission was granted jurisdiction over public utility rates by the Public Utilities Act (Statutes Ex. Sess. 1911, p. 18), and was expressly repealed by section 86 of the revised Public Utilities Act (Statutes 1915, Ch. 91), effective August 8, 1915. Under sections 30, 31 and 35 of the revised Public Utilities Act, this Commission clearly has the authority to prescribe just and reasonable rules and regulations on all subjects which are included within the present inquiry.

I have been unable to find on this point any decision by the courts of California or any statutory provisions prior to the enactment of the Public Utilities Act, in so far as telephone utilities are concerned.

In other states conflicting decisions have been rendered.

The following cases hold that water utilities may discontinue service for failure to pay delinquent bills:

McDaniel vs. *Springfield Waterworks Company,* 48 Mo. App. 273.

State vs. *Butte City Water Company,* 18 Mont. 199, 44 Pac. 966.

Jones vs. *Nashville,* 109 Tenn. 550.

Tacoma Hotel Company vs. *Tacoma L. and W. Company,* 3 Wash. 316, 28 Pac. 516, 14 L. R. A., 669.

The following cases establish the same principle with reference to gas utilities:

People vs. *Manhattan Gaslight Company,* 45 Barb. 136.

Vanderberg vs. *Kansas City Gas Company,* 126 Mo. App. 600, 105 S. W. 17.

The same rule was established with reference to telephone utilities in:

Rushville Co-operative Telephone Company vs. *Irvin,* 27 Ind. App. 62, 161 Ind. 524.

In *The Southwestern Telegraph and Telephone Company* vs. *Danaher, supra,* the Supreme Court of the United States reversed a judgment for $6,300.00 in favor of a patron of a telephone company in

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Arkansas under a statute providing for the recovery of penalties for discrimination in telephone service, on the ground that under all the circumstances of the case the telephone utility had been deprived of its property without due process of law. The Supreme Court pointed out that the legislature of Arkansas had not declared unreasonable the rule of the telephone utility providing for discontinuance of service for failure to pay bills. While drawing attention to decisions in other states upholding the reasonableness of such a rule, the Supreme Court clearly intimates that a finding by competent state authority either way on this question will not be disturbed by the Supreme Court in the absence of facts clearly showing a violation of the fourteenth amendment of the federal constitution.

A contrary conclusion was reached in the following decisions in other states, declaring unreasonable and void rules of various classes of utilities providing for discontinuance of service for failure to pay delinquent bills:

Water utilities—*Crumley* vs. *Watanga Water Co.*, 99 Tenn. 420, 41 S. W. 1058, 1060.

Gas utilities—*Gaslight Co.* vs. *Colliday*, 25 Md. 1.

Telephone utilities—*State* vs. *Nebraska Telephone Co.*, 17 Neb. 126, 22 N. W. 237.

The Wisconsin Railroad Commission has taken the same view in a number of recent decisions. In *Refusal of The Farmers' Union Telephone Company to Furnish Service to William Lemcke*, 13 W. R. C. R. 399, decided on December 9, 1913, the Commission, at page 402, said:

> "The question before the Commission, therefore, is whether a telephone company has the right to refuse service on the ground that previous bills have not been fully paid. A telephone company, as has been shown, may, by establishing proper rules, require its patrons to pay in advance for a reasonable period for the desired service, and if a patron who is in arrears to the company offers payment in advance for future service, we do not think it is consistent with its public duty for the company to refuse such service." (Quoting from 1 Wyman on Public Service Corporations, sec. 451.)

In *Refusal of Service by Madison Gas and Electric Company to F. M. Wylie*, 13 W. R. C. R. 518, decided on December 16, 1913, the Wisconsin Railroad Commission applied the same principle to the delivery of gas and electric service. At page 521, the Commission says:

> "The authorities are not in accord as to the obligation of the company to serve an applicant who is in arrears at other premises, although he tenders ready money for present service, but the best

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considered cases take the view that it is inconsistent with public duty to refuse service under such circumstances. The authorities holding that one who is owing for past service can not insist on future service until default has been made good, seem to consider the matter from the standpoint of the convenience to the company in making its collections. They extend the right of the private trader to the one engaged in a public calling, notwithstanding the apparent conflict between the right of the former and the public obligation of the latter."

After referring to the duty of the utility to collect its indebtedness promptly, the Commission, at page 522, continues:

"Because of such duty a company is permitted to demand prepayment of present service where the charge may be determined in advance, or in case of metered service may require a deposit of a sum of money sufficient to secure payment for the service rendered during stated intervals for which credit is extended, or may require a bond to secure such payment. Failing to establish or to enforce a rule to secure the prompt collection of bills when due, the company stands in the position of any other creditor and must resort to the courts to compel payment of such indebtedness. It may refuse to furnish service in the future unless prepayment is made, but because of its public duty it can not condition such service upon the liquidation of past charges."

As already indicated, the Supreme Court of California took exactly this position in the *Crow* case, *supra,* with reference to water utilities. The same reasoning applies to gas, electric and telephone utilities. A finding by competent public authority either way will undoubtedly be sustained as reasonable. The utility has the right to protect itself both as to metered and unmetered service, as herein indicated, by demanding payment for service or the establishment of credit in advance of the delivery of service. In view of the decision in the *Crow* case, I recommend that the Commission, in the interest of uniformity, apply the principle of that case to gas, electric and telephone utilities as well as to water utilities.

I suggest the following rule as Rule 6:

RULE 6.

A water, gas, electric or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service theretofore delivered.

7. Telegrams and Long Distance Telephone Messages.

The replies from the smaller telephone utilities to the circular letter of December 5, 1914, indicate with remarkable unanimity a desire that this Commission enable them to protect themselves against losses from

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long distance toll bills. This is for the reason primarily that they are dependent for long distance toll service upon the larger operating companies which own the toll lines and to which companies they are responsible for all long distance bills incurred by their patrons regardless of whether they are able to make collection or not. The rule hereinafter suggested as Rule 7 is intended to give telephone utilities the right to demand for themselves reasonable security in connection with this class of service. If the utility offers to extend to its patrons the convenience of sending telegrams and long distance telephone messages to the extent of such deposits as the patrons care to make, the size of the deposit is left to the discretion of the patron. The larger telephone utilities, which own and operate their own long distance toll lines, will probably consider it good policy in most cases to extend this convenience, without deposit, to all their patrons.

Deposits may be withdrawn at any time, after outstanding bills for telegrams and long distance telephone messages have been paid. No interest need be paid on them as this arrangement constitutes a special concession which obviates the need on the part of the patron of going to a telegraph office or long distance prepay station. The rule hereinafter suggested requiring the return of deposits after a year is obviously not applicable here.

I suggest the following rule as Rule 7:

RULE 7.

A telephone utility may, under uniform, non-discriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

8. Right of Utility to Protection in re Unmetered Service to be Delivered.

It is a well established principle of law, as indicated by the authorities discussed in connection with Rule 1, that water, gas, electric and telephone utilities which render unmetered or unmeasured service at flat rates may demand payment in advance. In service of this character, the amount to be paid for any given period of service is definitely known beforehand. Hence the case is one of payment in advance of a definite rate as distinguished from the presentation of some form of guaranty to secure the payment of a bill the exact amount of which can not be known until the end of the normal service period.

As direct payment may be required, no form of guaranty is necessary or permissible. Promptly after the effective date of the order herein, all water, gas, electric and telephone utilities shall return to the depos-

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itor all deposits heretofore made to guarantee payment for flat rate service.

I suggest the following rule as Rule 8:

RULE 8.

A water, gas, electric or telephone utility delivering unmetered service at flat rates may, under uniform, non-discriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

9. Minimum Notice Before Utility May Discontinue Unmetered Service.

A consumer should have a reasonable opportunity to pay his bills for unmetered service before the utility may discontinue service by reason of the failure of the consumer to make the advance payment.

Particular care should be taken not to injure irrigation consumers.

I suggest the following rule as Rule 9:

RULE 9.

A water, gas, electric or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

10. Return of Deposits After One Year or on Closing.

In *Reasonableness of Rules of Easton Gas Works and Eastern Pennsylvania Power Company of New Jersey*, decided on February 20, 1914, the board of public utility commissioners of New Jersey said in part:

> "The issue may fairly be raised, however, whether after adequate demonstration on the part of the consumer of his financial reliability, a public utility avowedly according credit to reliable consumers may not be justly required to refund an advance deposit, or apply the same in liquidation of bills due. There seems little warrant in equity for the indefinite retention of such deposits, even though interest thereon be allowed. It savors altogether too much of a forced loan."

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Frequent inquiries have been made of this Commission concerning the period of time during which a utility may retain a deposit which it has demanded to guarantee payment for metered service. The suggestion is constantly made that after all bills have been promptly paid over a period of time, such as a year, the consumer's credit should be deemed established and the deposit returned to him. Attention is also drawn to the frequent difficulty of finding consumers after a period of years, for the purpose of returning a deposit.

A consumer making a deposit covering service at one location shall have continuing credit therefor if he transfers his service to another location before the deposit is returned to him.

I suggest the following rule as Rule 10:

RULE 10.

After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

11. Interest on Deposits.

That a utility should pay interest on cash deposits held by it to secure the payment of bills for metered or measured service seems clear and is admitted by the utilities with substantial unanimity. An interest rate of 6 per cent per annum seems reasonable.

I suggest the following rule as Rule 11:

RULE 11.

Interest at the rate of 6 per cent per annum must be paid by each water, gas, electric or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

12. Contracts.

Water, gas, electric and telephone utilities frequently demand that an applicant sign a contract before service will be delivered. I do not now refer to extensions in unincorporated territory, where unusual conditions frequently obtain. Under the rules herein prescribed, the necessity for such contracts is not apparent. The consumer is bound by the utility's lawful rates, rules and regulations on file with this Commission. No contract is necessary to insure their applicability to him. The utility will secure ample protection under the rules herein estab-

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lished in the matter of payment for its service and for the cost of disconnections and reconnections. The initial installation is added to capital account and is considered when rates are established. It is difficult to find any other reason for compelling an applicant for service to sign such contract other than to hold him for a term beyond that for which he would desire to be held if he were a free agent—a motive to which this Commission can not give its sanction.

Accordingly I recommend that henceforth an applicant for service from a water, gas, electric or telephone utility be not required to sign a contract as a condition precedent to service; provided that it is not intended herein to pass on the question of contracts in connection with extensions in unincorporated territory which matter is left open for consideration in subsequent proceedings. Utilities of these classes shall continue to have the right to require applicants to sign reasonable applications for service, so that their records may contain the necessary data with reference to all consumers.

I suggest the following rule as Rule 12:

RULE 12.

Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided that such utility may require that reasonable written application for service be made.

II. SERVICE CONNECTIONS.

This branch of the inquiry will be considered under the following outline:

13. Service connection charges.
14. Charges for disconnecting and reconnecting services theretofore installed.

13. Service Connection Charges.

Many complaints have been made to this Commission concerning the imposition by utilities of so-called "service connection" charges. The term "service connection," as here used, does not refer to extensions of mains, but is limited to installation of service from a public street, highway, alley, lane or road to property abutting thereon. The "service connection" includes water and gas pipes, electric and telephone wires, water and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances.

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The chief complaint has been directed to the service connection charges of water utilities. This matter was carefully considered by this Commission in *City of Glendale* vs. *Title Guarantee and Trust Company* (Vol. 2, Opinions and Orders of Railroad Commission of California, 989), in which case this Commission, at page 991, said:

> "That it is the duty of a water company to supply service connections up to the property line and meters, where meters are used, without direct expense to the consumer, seems clear both on principle and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company."

The same principle, namely, that it is the duty of water utilities to install at their own expense meters and service connections from the mains to the curb line or property line of the consumer has been consistently applied by this Commission in decisions subsequent to the *Glendale* case.

The Wisconsin Railroad Commission has reached the same conclusion. In *City of Janesville* vs. *Janesville Water Company,* 7 W. R. C. R. 628, the Wisconsin Commission at page 681, says:

> "The question as to who should own meters appears to be settled. The only point to be decided here is whether or not services are a part of the facilities which the utility is expected to furnish. The logical conclusion seems to be that the utility should install and own services to the curb line. The utility, and not the consumer, has the right to occupy the streets, and all pipes laid in the streets should be the property of the utility, and we believe should be put in by the utility. The business of the utility is to deliver its product to the premises of the consumer. If the utility should own the mains through which water is carried to various sections of the city, it seems equally true that it should own all parts of the distribution system as far as the consumer's premises. The service pipe from main to curb is as much a part of the utility's distribution system as is the main itself. Both parts of the equipment have the same purpose—the delivery of water to consumer's premises.
>
> "It is not believed that the utility should be required to install and own such portions of the service as are on private property. True, the utility very often owns meters, which are installed on consumer's premises, but such installation is done as a matter of convenience to the utility. As the purpose of the utility is to

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deliver water to the premises of the consumers, if other conditions were equal, the logical place for the meter would be at the property line. Piping inside the curb line stands in very much the same relation to the utility as does the piping and plumbing in buildings, and should be a part of the property of consumers."

The courts, with substantial unanimity, have reached the same conclusion:

Spring Valley Water Works vs. *City and County of San Francisco,* 82 Cal. 286, 316.

Title Guarantee and Trust Company vs. *Railroad Commission,* 168 Cal. 295, 299, 302.

Hatch vs. *Consumers Company,* 17 Idaho, 204, 104 Pac. 670.

Consumers Company vs. *Hatch,* 224 U. S. 148.

Pocatello Water Company vs. *Standley,* 7 Idaho, 155, 61 Pac. 518.

Bothwell vs. *Consumers Company,* 13 Idaho, 568, 92 Pac. 533.

City of Montgomery vs. *McDade,* 180 Ala. 156, 60 So. 798.

Pine Bluff Corporation vs. *Toney,* 96 Ark. 345, 131 S. W. 680.

International Water Company vs. *City of El Paso,* 51 Tex. Civ. App. 321, 112 S. W. 816.

Cleveland vs. *Malden Water Company,* 69 Wash. 541, 125 Pac. 769.

State ex rel. Hogden vs. *Hoquiam Water Company,* 70 Wash. 682, 127 Pac. 304.

No reason occurs why the same principle should not be applicable to gas and electric utilities. The following cases hold that it is the duty of gas utilities to pay for the meters and in effect that the consumer can not be called upon to pay for the apparatus used to measure gas any more than for the machinery used in its manufacture:

Montgomery L. and P. Company vs. *Watts,* 165 Ala. 373, 26 L. R. A. (N. S.) 1109.

Louisville Gas Company vs. *Dulaney & Alexander,* 100 Ky. 405, 36 L. R. A. 125.

City of Buffalo vs. *Buffalo Gas Company,* 80 N. Y. S. 1093.

The same logic applies to gas pipes to the property or curb line, to electric wires to the first point of support on the consumer's premises, to telephone wires to the place of consumption of the service, and to electric transformers and meters and telephone instruments and appurtenances.

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Electric wires from the property or curb line to the first point of support and telephone wires to the place of consumption of the service are generally so short and inexpensive that these utilities do not require the consumer to pay for them, although they are in part on his property. The utility, however, if it desires to do so, may fairly insist that the consumer pay for pipes laid or poles set on the consumer's property for the purpose of serving him.

Promoters and other persons occasionally ask utilities to make service connections in advance of actual use of the service, for the purpose of enhancing the saleability of their lots. It is obviously unfair to the utility and to its existing customers to compel the utility to make at its own expense service installations which may remain idle over long periods of time. Hence, subject to appeal to this Commission, a utility may refuse to make a service connection at its own expense unless it is satisfied that the service will actually be used in the reasonably immediate future.

It is not intended to pass herein on the question of municipal ordinances requiring the installation of service connections ahead of paving. That matter is left open for subsequent consideration.

While not formally passing on the question, I desire to draw the attention of water, gas and electric utilities to the question whether it would not be well for them to purchase from their consumers such meters, regulators and transformers as are now the property of the consumers.

I suggest the following rule as Rule 13:

RULE 13.

A water, gas, electric or telephone utility which operates upon, under or along any public street, highway, alley, lane or road shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane or road or to such point on the consumer's premises as the utility may agree upon. The term "service connection," as herein used, shall include water and gas pipes, electric and telephone wires, water, gas and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

14. Charges for Disconnecting and Reconnecting Services Theretofore Installed.

The cost of making an initial service installation is a proper capital account charge and hence should not be considered as an operating

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charge or as in any manner assessable against the individual consumer.

After an initial service installation has been made, however, it may become desirable or necessary to disconnect and thereafter to reconnect the service.

It is frequently provided that if service is disconnected by reason of failure of the consumer to comply with the utility's reasonable rules and regulations, the consumer shall pay a specified fee to cover the labor of disconnecting and reconnecting. It is not fair that the utility, or the consumers who comply with the utility's reasonable rules and regulations, should be compelled to bear this expense and such rule is entirely proper, provided the amount of the fee bears a reasonable relation to the actual average cost of making the disconnection and the reconnection. *City of Janesville* vs. *Janesville Water Co.*, 7 W. R. C. R. 628, 683.

The problem becomes more difficult when a consumer asks that his service be disconnected and thereafter the same consumer or another consumer takes service at the same premises. The cost of making this disconnection and reconnection is properly an operating expense. It is possible to meet this expense in one of three methods: (1) the cost may be charged directly to the new or the resuming consumer; (2) the cost may be distributed over the periodic payments in such manner that it is returned to the utility within a designated time; or (3) the cost may be merged in the general operating expenses.

The problem is particularly important in California at many localities which are largely season resorts, where the disconnections and reconnections are frequent and the period of service to each individual consumer is relatively short. In such cases, it would seem unreasonable to require the relatively few permanent consumers in the particular locality or the more permanent population in some other locality served by the same utility, to pay increased rates by reason of the expense of disconnecting and reconnecting the services of the seasonal or transient consumers. On the other hand, in permanent communities in which there are relatively few cases of disconnections and reconnections, the utility may desire to regard such costs, particularly if they are low, as part of its general operating expenses, without the necessity of a special fee or other arangement with the new or the resuming consumer.

It is not feasible to establish a single, uniform practice on this point. The establishment of reasonable rules and regulations for each community or type of consumers to cover this subject must be left in the first instance to the utility, subject to review by this Commission.

As the cost of disconnection and reconnection will thus be provided for, utilities will no longer be permitted to make the so-called "cancellation charges."

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I suggest the following rule as Rule 14:

RULE 14.

Under reasonable, non-discriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be (1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancellation charges" of water, gas, electric and telephone utilities are hereby abolished.

III.

EXTENSIONS.

The subject of extensions will be considered under the following heads:

15. Extensions within municipalities.
16. Extensions outside of municipalities.
17. Ownership of extensions.

15. Extensions Within Municipalities.

This Commission's powers in the matter of directing public utilities to make extensions are specified in section 36 of the Public Utilities Act, reading as follows:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such

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reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

While the section apparently contemplates separate hearings on the facts of individual cases if the utility and the applicant have been unable to agree, a consideration of the principles involved may serve to clarify the situation for all parties and to reduce materially the number of cases of this character which are continually coming before this Commission.

Wyman, in his work on Public Service Corporations, expresses his views on this subject in sections 281 and 797, as follows:

"Sec. 281. *Obligation to the community.*

It is obvious that the problems raised in this topic have not been disposed of as yet. It is plain that the existing facilities must in many instances be further developed in readiness to give service to those beyond the present lines, since what has really been undertaken is the proper service of the whole community dependent upon the established company. This at least involves the well-settled central territory within which service is plainly demanded, whether mains have been laid in all the streets or not. Certainly all premises situated within the network of the existing mains and within convenient connecting distance of their lines should be served. All of these premises come within the sphere of influence, already established, differing slightly from premises abutting. But the law will soon require, if it does not already, that the existing mains must be gradually extended as the growth of population in the community which the corporation has undertaken to serve demands the expansion.

Sec. 797. *Facilities which the service requires.*

In most of the public employments of the modern type what is undertaken is not merely the devoting of particular equipment to public use but rather the rendering of a certain service to the community with which it professes to deal. Thus a modern railroad plainly undertakes general transportation along its route; and since it has professed this general service it must see to it that it has sufficient equipment to handle the business which it has in effect invited by this general profession. The term adequate facilities is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might

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be fairly demanded, regard being had, among other things, to the extent of the demand for transportation, and the cost of furnishing the additional accommodations asked for. All this is particularly true of the municipal services—such as waterworks, gas plants, electric plants, and telephone systems. There are sufficient authorities, most of which have been discussed elsewhere, to the effect that their obligation to give service is not confined to the original pipes which have been laid, or wires which have been strung. *Such companies are held to undertake the service of their communities; and they must, to speak in general, be prepared to extend this system throughout their district to meet the reasonable demands of the growing community.*"

This subject was carefully considered by the Supreme Court of the United States in *Russell* vs. *Sebastian*, 233 U. S. 195, decided on April 6, 1914. In this case, the Supreme Court held that the service of a public utility holding a general franchise within a municipality is a community service and that the utility is under the implied obligation to serve the entire community.

In the *Russell* case, the Supreme Court decided that the Economic Gas Company which, under the constitutional franchise granted by section 19 of article XI of the constitution of California prior to its amendment on October 10, 1911, had already constructed a gas distributing system in certain of the streets of the city of Los Angeles for the purpose of supplying gas to the inhabitants of said city, had a right to extend its system through all the streets of the municipality and that the constitutional franchise was not limited to laying gas mains in the streets already occupied by the company on October 10, 1911. In other words, the Economic Gas Company had a constitutional franchise to construct its gas distributing system upon any and all streets within the city of Los Angeles. After reaching this conclusion, Mr. Justice Hughes indicates that a utility which has a franchise to construct its system on all the streets of a municipality is under an obligation to supply service to the entire community of such municipality. He states on page 208 of the Reporter:

"*The service, as has been said, was a community service.* Incident to the undertaking in response to the State's offer was the obligation to provide facilities that were reasonably adequate. (Citing cases.) It would not be said that either a water company or a gas company, establishing its service under the constitutional grant, could stop its mains at its pleasure and withhold its supply by refusing to extend its distributing conduits so as to meet the reasonable requirements of the community. But this duty and the right to serve, embracing the right under the granted privilege to install the means of service, were correlative."

The most recent decision which discusses the obligation of a public utility to extend its mains is *Lukrawka* vs. *Spring Valley Water Com-*

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pany, decided by the Supreme Court of California on February 13, 1915, and reported in Volume 49, California Decisions, page 177. In this case, it appears that Spring Valley Water Company has a constitutional franchise to construct its water system in the city and county of San Francisco to supply the municipality and its inhabitants with water. Complainants sought a writ of mandamus to compel the water company to extend its mains to supply water to complainants in the Richmond District in San Francisco. The Superior Court rendered judgment in favor of the water company. This judgment was reversed by the Supreme Court.

Justice Lorigan, after referring to Wyman's views and the *Russell* case, *supra,* concludes on page 187 that the water company undertook a community service, as follows:

> "We are of the opinion therefore for the reasons given and under the authorities we have referred to that when the respondent accepted the franchise offered by the State and undertook to supply the municipality of San Francisco and its inhabitants with water, it assumed a public duty to be discharged for the public benefit; a community service commensurate with the offer of the franchise which involved the duty of providing a service system which would be reasonably adequate to meet the wants of the municipality not only at the time it began its service, but likewise to keep pace with the growth of the municipality, and to gradually extend its system as the reasonable wants of the growing community might require, and as it appears from the petition in this case that respondent is in a position to discharge this duty toward petitioners by a reasonable extension of its mains it should have done so on their demand and having refused may be compelled to do it."

Justice Lorigan then states a necessary qualification to the foregoing rule, as follows:

> "In reaching this conclusion it is of course to be borne in mind that the right of an inhabitant of the municipality or the inhabitants of a particular portion of it to compel the service to them by the water company through the extension of its system, is not an absolute and unqualified right. The fact that the water company has undertaken to serve the entire municipality and that it would be of advantage to an inhabitant thereof, or a number of them to have the water system extended to supply them would not of itself be sufficient to require or compel the company to make the extension. The duty which the water company has undertaken is of a public nature and to meet a public necessity for the supplying of water to the community. The obligation of the company is not to supply each or any number of inhabitants of the municipality on demand as an absolute right on their part, but it has only assumed and become charged with the public duty of furnishing it where there is a reasonable demand for it and a reasonable extension of the service can be made to meet the demand. The right to require the service and the duty of furnishing it by an

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extension of the water system is to be determined from a consideration of the reasonableness of the demand therefor."

That the reasonableness of a particular extension must be determined upon the facts of the case was held by Justice Lorigan on page 185, as follows:

"Whether it does or not is to be determined by a consideration of the facts in each particular case and, among other things, by a consideration of the duties of the company, the rights of its stockholders, the supply of water which the company may control for distribution, the facilities for making extensions to a locality beyond its present point of service, the rights of existing customers, the wants and necessities of the locality demanding it, and how far the right of the community as a whole may be affected by the demanded extension. We refer to this matter of reasonableness of demand to be considered in determining the right to require the extension of service on account of the general language used in the authorities cited in sustaining the *implied obligation of a public service corporation under its charter to supply all the inhabitants of a municipality with water.* While this is the obligation it undertakes, the right of the inhabitants of the municipality to have it discharged is, as we have said, not an absolute but a relative one which may be enforced only when conditions are such that there exists a reasonable demand for the fulfillment of the obligation. In the case at bar the facts charged in the petition show that there is such a reasonable demand for such an extension and as there is a liability on the respondent under such circumstances to comply with it, it may be compelled to do so."

A number of decisions in other states also establish the general duty of a utility holding a general franchise, to serve the entire community.

In *Phelan* vs. *Boone Gas Company,* 147 Iowa, 626, N. W. 208, the court says on page 209 of the Reporter:

"By accepting from the city the franchise to lay pipes and mains in the streets and alleys and through them furnish the inhabitants and the public with fuel, illuminating, and power gas, the company assumed a public duty. *That duty was to supply gas at reasonable rates to all the inhabitants of the city,* and to charge each the same price and furnish on the same terms as it did to every other for like service under the same or similar conditions."

In *Bothwell* vs. *Consumers Company,* 13 Idaho, 568, 92 Pac. 533, at page 534, the court says:

"The company in the enjoyment of its franchise privileges is placed by the constitution under a public duty to supply water to all living within the franchise limits, on payment of the rental rates. *It owes this duty to every one so long as it has water to sell, whether he is on the line of its main or at a great distance therefrom.*"

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In *Pocatello Water Co.* vs. *Standley*, 7 Idaho, 155, 61 Pac. 518, the court at page 518 says:

> "Under the said franchise the respondent has been granted the right to lay its mains and pipes 'over, along and under' the streets, alleys and highways of said city for the purpose of supplying said city and its inhabitants with a sufficiency of pure water. It had the authority to lay all of the mains and pipes in said streets and alleys necessary to accomplish the purposes for which said franchise was granted. *It is obliged to lay its mains and pipes in said streets and alleys, and to deliver water to the consumers at its franchise limits*, and to the line of the premises of the consumer, if such premises border on said franchise limits."

In *Monahan* vs. *Pacific Gas and Electric Company*, Vol. 5, Opinions and Orders of Railroad Commission of California, 298, this Commission considered this general question. One of the issues presented in that case was the utility's duty to extend its electric distributing system within the city of San Jose. After referring to the rule of the *Russell* case, this Commission, at page 302, said:

> "It applies to all classes of utilities which receive a franchise authorizing them to use all the streets of a city, such as the constitutional franchise which has been granted by the State itself to all electric, gas and water companies which started construction in this State in the streets of any city prior to October 10, 1911. Each of these classes of utilities, as well as any other utility which has heretofore secured or may hereafter secure a franchise authorizing it to use all the streets of any of our California cities, is under the correlative duty of giving service to all the inhabitants of the city. While it is possible that it may be necessary in some of our cities having wide territorial extent, to modify this general rule in some respects, the present case is clearly one for the application of the general rule. I accordingly recommend that the order in this case contain a provision to the effect that the electric company shall, at its own cost, make extensions to serve all persons desiring electric service in the city of San Jose and in the other incorporated cities in the San Jose district over which this Commission has jurisdiction in this respect. The rate in this case will be established on the theory that the service is community-wide, and extensions which may be unprofitable in themselves will be taken care of in the rate so established."

Of course, there will be cases in which an extension at the utility's expense even within a municipality in which the utility has a general franchise would not be just or reasonable either to the utility or the existing consumers. Some of our California cities cover such vast areas of territory and others whose area is smaller nevertheless contain unsettled portions so far removed from the present more thickly populated districts that it can not be expected that extensions must uniformly be made at the utility's expense. Again, as was said by

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Commissioner Edgerton in *Clark* vs. *Hermosa Beach Water Company*, Vol. 2, Opinions and Orders of Railroad Commission of California 149, at page 152, referring to the effect of certain extensions on rates:

> "If a utility were operating in a valley and was providing water by gravity flow to people in the valley and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service of the mountain top."

While other illustrations might be given to show that there are cases in municipalities in which it would not be reasonable to compel a utility, even though it holds a general franchise, to make extensions at its cost, it seems reasonable to hold as a general proposition that *prima facie* a utility whose franchise in a municipality is community-wide is under the correlative duty of rendering community-wide service and of constructing at its expense the extensions necessary thereto. If in any case the utility considers it unreasonable to make the extension at its sole cost, the matter may be taken up informally with the Commission or determined formally as provided by section 36 of the Public Utilities Act.

The duty of gas and electric utilities to render service at their cost was heretofore limited by section 629 of the Civil Code of California to a distance of 100 feet from any main, or direct or primary wire, of the utility. However, this section has been repealed by section 86 of the revised Public Utilities Act, effective August 8, 1915. It is a reasonable inference that the purpose of the repeal of this section was to leave this Commission free to prescribe reasonable rules and regulations, even though the result might be the construction of extensions at the utility's sole cost, even beyond 100 feet.

I suggest the following rule as Rule 15:

RULE 15.

A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided, that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

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16. Extensions Outside of Municipalities.

It is not feasible at this time to establish a general rule defining free limits for extensions outside of municipalities. The Commission naturally desires the utility to be as liberal as possible in the construction of extensions, but regard must also be had to the utility's financial condition and the rights of existing consumers. If the parties can not agree, they may submit the matter informally to the Commission or formally as provided by section 36 of the Public Utilities Act.

The Commission has frequently drawn attention to the fact that it is unreasonable for utilities to urge that each extension constructed at their cost must be profitable in itself. Such a policy would lead to grave results in thwarting the development of this State and can not be permitted by this Commission.

The Commission's attention has recently been drawn to a number of cases in which utilities which have a monopoly in certain territory have refused to make extensions in cases in which they would have made them had there been competition and under circumstances under which they actually do make extensions in other territory in which competition exists. If this attitude persists, it will become the matter of very serious consideration from the Commission. If a utility adopts such a policy in any part of the territory served by it, it must expect this fact to be taken into consideration if another utility of like kind asks authority to enter the territory under consideration or any other portion of the territory served by the existing utility.

I suggest the following rule as Rule 16:

RULE 16.

A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

17. Ownership of Extensions.

The utility should own all the facilities which it uses to serve the public. Endless difficulties and annoyances arise under any other rule. If an applicant for service makes payment in connection with an extension, this payment should be regarded as a loan, to be returned under reasonable conditions. The title to the extension should become vested in the utility.

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It can not be said that any one method of returning such loan is in itself the only reasonable rule. At times, such loans are returned piecemeal as additional services are installed; or piecemeal by crediting periodically stated portions of the consumer's bills; or in a lump sum when the entire periodic revenue from the extension totals a designated sum. The utilities should in the first instance adopt such rule or regulation as they consider reasonable under the general principle herein established, subject, of course, to review by this Commission.

I suggest the following rule as Rule 17:

RULE 17.

In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, non-discriminatory rules and regulations. Interest shall be paid on such loans at the rate of 6 per cent per annum.

IV.

MODIFICATION OF RULES.

18. What Rules Are Intended to Establish.

Nothing in any of the foregoing rules should be construed as depriving the utility of the right to establish and enforce uniform, non-discriminatory rules more favorable to their patrons than the rules herein authorized. These rules are intended to establish what the utility *may* demand and not what it *must* require.

I submit the following rule as Rule 18:

RULE 18.

A water, gas, electric or telephone utility may establish uniform, non-discriminatory rules more favorable to its consumers than the rules herein established.

As with all general rules, cases will arise in which the application of some rule may, under the facts of some case or class of cases, work a hardship. In such event application may be made to the Commission for a modification of the rule.

It will hardly be necessary to direct that the utilities shall apply the foregoing rules without discrimination as to persons and that their own rules adopted hereunder shall be non-discriminatory. Likewise there should be no discrimination between localities, but different conditions in different localities may justify different rules and regulations on the part of the utility.

The Commission has heretofore rendered a large number of decisions dealing in individual cases with various phases of the general subject-

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matter of the present inquiry. The orders therein shall stand in so far as they are consistent with the rules herein established but shall yield to the order herein in so far as inconsistent therewith.

The rules herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric and telephone utilities. Rules and regulations now on file, and inconsistent with the rules herein established, should be revised and refiled within sixty days after the effective date of the order herein.

In order to provide ample time for the printing of this decision and its transmission to all utilities affected, I recommend that it be made effective sixty days from date.

I submit the following form of order:

ORDER.

Each water, gas, electric and telephone utility doing business within this State having been served with notice of this proceeding, and opportunity having been accorded each such utility to appear and be heard, and evidence and argument having been received, and this case being now ready for decision,

It is hereby ordered as follows:

1. The following rules and regulations are hereby found to be just and reasonable rules and regulations and are hereby established as rules and regulations to be obeyed and followed by all water, gas, electric and telephone utilities doing business within California:

I.

SERVICE CHARGES.

A.

Metered Service.

RULE 1.

A water, gas, electric or telephone utility may, under uniform, nondiscriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

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RULE 2.

If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; provided that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities shall not exceed $2.50.

RULE 3.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by Rule 2; provided that service may not be discontinued for failure to make such deposit until the time specified in Rule 5 herein after notice of intention to discontinue service unless such demand is complied with.

RULE 4.

If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill and may require that the deposit be restored to its original amount; provided that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in Rule 5 herein.

RULE 5.

A water, gas, electric or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

RULE 6.

A water, gas, electric or telephone utility may not discontinue service by reason of non-payment of bills for metered or measured service theretofore delivered.

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RULE 7.

A telephone utility may, under uniform, non-discriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make.

B.

Unmetered Service.

RULE 8.

A water, gas, electric or telephone utility delivering unmetered service at flat rates may, under uniform, non-discriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

RULE 9.

A water, gas, electric or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

C.

Return of Deposits.

RULE 10.

After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

RULE 11.

Interest at the rate of 6 per cent per annum must be paid by each water, gas, electric or telephone utility on all deposits held by it to secure the payment of bills for metered service; provided that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

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D.

Contracts.

RULE 12.

Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; provided that such utility may require that reasonable written application for service be made.

II.

SERVICE CONNECTIONS.

RULE 13.

A water, gas, electric or telephone utility which operates upon, under or along any public street, highway, alley, lane or road shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane or road or to such point on the consumer's premises as the utility may agree upon. The term "service connection," as herein used, shall include water and gas pipes, electric and telephone wires, water, gas and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

RULE 14.

Under reasonable, non-discriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric or telephone utility may provide that the cost of disconnecting and reconnecting service connections may be (1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancellation charges" of water, gas, electric and telephone utilities are hereby abolished.

III.

EXTENSIONS.

RULE 15.

A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a

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municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

RULE 16.

A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

RULE 17.

In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, non-discriminatory rules and regulations. Interest shall be paid on such loans at the rate of 6 per cent per annum.

IV.

MODIFICATION OF RULES.

RULE 18.

A water, gas, electric or telephone utility may establish uniform, non-discriminatory rules more favorable to its consumers than the rules herein established.

2. The rules and regulations herein established shall take precedence over orders heretofore made by the Commission in other proceedings, in so far as said orders may be inconsistent with said rules and regulations.

3. The rules and regulations herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric and telephone utilities in so far as inconsistent therewith. Rules and regulations now on file and inconsistent with the rules and regulations herein established should be revised and refiled within sixty days from the effective date of this order.

4. Within thirty days after the effective date of this order, each water, gas, electric and telephone utility shall return to the depositor

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all deposits heretofore made to guarantee payment for flat rate service and all deposits made to guarantee payment for metered or measured service by patrons who have paid all their bills promptly during the twelve months prior to the effective date of the order herein.

5. If hardship results from the application to special facts of any rule or regulation herein prescribed, application may be made to the Railroad Commission for a modification.

6. This order shall become effective on October 11, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of August, 1915.

DECISION No. 2690.

IN THE MATTER OF THE APPLICATION OF SPRING VALLEY WATER COMPANY FOR AUTHORITY TO ISSUE PROMISSORY NOTES AND TO PLEDGE BONDS TO SECURE THE SAME, AND FOR AUTHORITY TO ISSUE COLLATERAL TRUST GOLD NOTES; TO EXECUTE A COLLATERAL TRUST AGREEMENT AND TO PLEDGE BONDS THEREUNDER TO SECURE SAID NOTES.

Application No. 1820.

Decided August 12, 1915.

Applicant has at present outstanding, promissory notes of the face value of $1,000,000.00 bearing interest at 5½ per cent. These notes it proposes to renew with notes of a like face value bearing interest at 5 per cent, also to issue and pledge $1,334,000.00 face value of bonds as security therefor. Applicant has also expended for capital purposes $982,668.00 from income and proposes further to expend the sum of $736,572.00 and to refund the $1,000,000.00 notes herein authorized. For these purposes it applies for permission to issue $2,500,000.00 face value 5 per cent collateral trust notes, to be sold at not less than 98, and to execute a trust agreement, pledging $3,334,000.00 face value of bonds as security therefor. Application granted.

John E. Behan, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by Spring Valley Water Company for authority as follows:

1. To issue promissory notes of the face value of $1,000,000.00 with interest at the rate of 5 per cent per annum and to pledge $1,334,000.00 of its general mortgage bonds as security therefor.

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2. To issue $2,500,000.00 of two-year 5 per cent collateral trust notes, secured by $3,334,000.00 of its general mortgage bonds.

3. To execute a trust agreement providing for the issue of the aforesaid $2,500,000.00 of notes.

Spring Valley Water Company supplies domestic water to the inhabitants of the city of San Francisco. It was heretofore authorized by this Commission to issue $1,000,000.00 of 5½ per cent collateral trust notes, dated December 1, 1913, maturing December 1, 1915. The applicant now desires to call these notes on September 1st. It proposes to issue for the purposes of such redemption, $1,000,000.00 face value of short term promissory notes to bear 5 per cent interest. Thereafter, on or before December 1, 1915, Spring Valley Water Company proposes to issue $2,500,000.00 of two-year 5 per cent collateral trust notes and to use the proceeds as follows:

To repay the aforesaid promissory notes—$1,000,000.00.

To reimburse the Spring Valley Water Company for capital expenditures made between October, 1913, and July 1, 1915, as follows:

Construction of Calaveras dam	$349,455 00	
City pipe system, meters and miscellaneous capital Expenditures	170,060 00	
Twin Peaks tunnel, assessments Nos. 1 and 2	301,577 00	
Mortgage notes	161,576 00	
		$982,668 00

To apply on account of estimated capital expenditures as follows:

Mortgage notes payable in 1915 and 1916	$123,320 00	
Twin Peaks tunnel assessment, third installment	197,252 00	
Estimated expenditure in construction of Calaveras dam from July 1, 1915, to December 31, 1915	266,000 00	
Estimated expenditures in extension of mains in San Francisco from July 1, 1915, to December 31, 1915	150,000 00	
		$736,572 00
Total		$2,719,240 00

The applicant reports that the moneys for which it now desires to be reimbursed have been obtained through short term note issues as follows:

Note to Bank of California National Association, dated December 1, 1913	$75,000 00
Note to Bank of California National Association, dated July 1, 1915	120,000 00
Note to Wells Fargo Nevada National Bank, dated July 1, 1915	120,000 00
Note to Alameda Sugar Company and now held by Empire Mines and Investment Company, dated April 1, 1911	75,000 00
Note to Empire Mines and Investment Company, dated May 29, 1914	75,000 00
Note to Empire Mines and Investment Company, dated June 4, 1914	25,000 00
Total	$490,000 00

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Applicant requests that as a condition in the order it be required to discharge these promissory notes from the proceeds of its proposed issue of $2,500,000.00 of two-year collateral trust notes.

The affairs of this corporation have been heretofore reviewed by this Commission in previous applications.

The Calaveras dam has been constructed by the applicant for the purpose of increasing its water supply for service within the city of San Francisco. The applicant has also entered into an agreement with the city of San Francisco whereby it will proceed to extend its mains for the purpose of serving water to sections of the city of San Francisco not now supplied.

The applicant also reports that it is under the necessity of paying a total assessment, with interest, of $1,631,763.63 for the Twin Peaks tunnel construction. The applicant has treated this as a capital charge under the theory that the amount of such assessment would be reflected in the increased value of its real estate holdings.

After an examination of all of the facts presented in connection with this application, I recommend that it be granted and submit the following form of order:

ORDER.

Spring Valley Water Company, having applied to this Commission for authority to issue notes and to execute a trust agreement as specified in the foregoing opinion, and a hearing having been held and it appearing that the purposes for which the applicant proposes to issue said notes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Spring Valley Water Company be granted authority, and it is hereby granted authority, to issue $1,000,000.00 face value of promissory notes with interest not to exceed 5 per cent per annum, said notes to net the applicant the face value thereof, to mature not to exceed one year from date, and to be used for the purpose of redeeming applicant's present outstanding issue of $1,000,000.00 of two-year 5½ per cent collateral trust notes, dated December 1, 1913.

It is further ordered that Spring Valley Water Company be given authority, and it is hereby given authority, to pledge as collateral security for the $1,000,000.00 of promissory notes hereby authorized to be issued, $1,334,000.00 of applicant's general mortgage bonds, being the bonds now pledged as collateral security by the applicant for its issue of $1,000,000.00 of two-year 5½ per cent collateral trust notes.

It is further ordered that Spring Valley Water Company be granted authority, and it is hereby granted authority, to issue $2,500,000.00 of two-year 5 per cent collateral trust notes, to be dated September 1, 1915.

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It is further ordered that Spring Valley Water Company be granted authority, and it is hereby granted authority, to pledge as collateral security for said $2,500,000.00 of collateral trust notes, $3,334,000.00 of its general mortgage bonds, said $3,334,000.00 of its general mortgage bonds to include the $1,334,000.00 of applicant's general mortgage bonds herein authorized to be pledged as collateral security for the $1,000,000.00 of promissory notes herein authorized to be issued.

It is further ordered that Spring Valley Water Company be granted authority, and it is hereby granted authority, to execute a trust agreement with Union Trust Company of San Francisco to secure said issue of $2,500,000.00 of two-year 5 per cent collateral trust notes, said agreement to be dated September 1, 1915, and to be substantially in the form of a copy of said trust agreement filed with this Commission in connection with the application herein and marked Exhibit "B."

The authority herein given as to the issue of said $2,500,000.00 of 5 per cent collateral trust notes is given upon the following conditions and not otherwise:

1. Said notes shall be sold so as to net the applicant not less than 98 per cent of the face value thereof plus accrued interest thereon.

2. The proceeds derived from the sale of said $2,500,000.00 of collateral trust notes shall be used as follows:

(*a*) To redeem, discharge or refund the $1,000,000.00 of promissory notes herein authorized to be issued.

(*b*) To reimburse the applicant for capital expenditures made between October, 1913, and July 1, 1915, as follows:

Construction of Calaveras dam	$349.455 00
City pipe system, meters and miscellaneous capital expenditures	170,060 00
Twin Peaks tunnel assessments Nos. 1 and 2	301,577 00
Mortgage notes	161,576 00

(*c*) To apply on account of estimated capital expenditures as follows:

Mortgage notes payable in 1915 and 1916	$123,320 00
Twin Peaks tunnel assessment, third installment	197,252 00
Estimated expenditure in construction of Calaveras dam, from July 1, 1915, to December 31, 1915	266,000 00
Estimated expenditures in extension of mains in San Francisco from July 1, 1915, to December 31, 1915	150,000 00
Total	$736,572 00

3. The applicant shall use the proceeds from its issue of $2,500,000.00 of 5 per cent two-year collateral trust notes for the purposes mentioned under subdivision (*c*) above, only after it shall have paid off and discharged the $1,000,000.00 of promissory notes herein authorized to be issued, and the $490,000.00 of promissory notes heretofore referred to in the foregoing opinion.

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4. Spring Valley Water Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the notes hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority herein granted to issue notes is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

6. The authority herein granted shall apply to such notes as shall have been issued on or before June 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of August, 1915.

DECISION NO. 2691.

IN THE MATTER OF THE APPLICATION OF TUOLUMNE ELECTRIC COMPANY FOR ORDER AUTHORIZING ISSUE OF NOTES.

Application No. 1798.

Decided August 12, 1915.

Applicant, having notes of the face value of $12,559.10 due, with accumulated interest thereon amounting to $688.54, applies for permission to issue new notes to include both principal and accrued interest, and though applicant's present revenues are insufficient to pay operating expenses, as it proposes taking steps to sell its system to another power company, it is permitted to renew its present indebtedness amounting to $12,559.10, though application to include accrued interest in the face value of the new notes, denied.

J. P. O'Brien, for Applicant.

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REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In this application, Tuolumne Electric Company asks authority to issue certain notes in lieu of notes issued without authorization from this Commission.

Applicant asks authority to issue notes as follows:

Payee	Principal	Accrued interest	Rate of interest	Total principal and interest
Garden City Bank and Trust Company	$10,000 00	----------	7%	$10,000 00
Tuolumne Transmission Company	2,100 00	$528 26	7%	2,682 26
P. H. Mabury	459 10	106 33	6%	565 43
	$12,559 10	$688 59	----------	$13,247 69

On June 1, 1905, Tuolumne Electric Company borrowed $5,000.00 from Garden City Bank and Trust Company of San Jose. The note given as an evidence of this indebtedness was paid in 1907. On September 29, 1906, the sum of $5,000.00 was borrowed from the bank. Another $5,000.00 was borrowed December 7, 1907. The notes given for the amount borrowed on September 29, 1906, and December 7, 1907, have been renewed from time to time. On August 20, 1914, the two notes were consolidated and one note issued to the bank. The note is endorsed by certain of the stockholders of Tuolumne Electric Company. The testimony is to the effect that the money borrowed from Garden City Bank and Trust Company was used for construction purposes. The interest on the note or notes has been regularly paid.

On December 29, 1910, Tuolumne Electric Company issued a note for $2,100.00 to Tuolumne Transmission Company. Of the proceeds, $1,800.00 was used to pay semiannual bond interest and $300.00 to pay semiannual interest on note for $10,000.00 payable to Garden City Bank and Trust Company. The interest due on this note amounts to $582.26 and is included in a new note issued February 18, 1915, to Tuolumne Transmission Company. The note issued on February 18, 1915, was issued without the authority of this Commission, but without any intention to violate the Public Utilities Act.

On August 10, 1911, P. H. Mabury, a stockholder of Tuolumne Electric Company, loaned $459.10 to the company to pay for the cost of constructing a flume. Interest in the amount of $106.33 remains unpaid. On February 18, 1915, applicant, without authority from this Commission, issued to P. H. Mabury a note for the sum of $565.43, in renewal of the note for $459.10 and the unpaid interest in the sum of $106.33.

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Applicant, in its annual report for the year ending December 31, 1914, reports assets and liabilities as follows:

Assets.

Fixed capital	$133,217 34
Cash and deposits	17 52
Miscellaneous accounts receivable	312 87
Discount on stocks	108,597 75
Discount on bonds	8,488 99
Deficit	77,506 31
Total	$328,140 78

Liabilities.

Stock	$145,865 00
Bonds	88,000 00
Notes payable	12,665 10
Accounts payable	26,586 44
Stock assessments	55,024 24
Total	$328,140 78

Applicant has reported earnings and expenses for the years 1913 and 1914, as follows:

	1913.	1914.
Operating revenues	$2,414 04	$4,652 13
Operating expenses	5,580 14	6,653 64
Net operating loss	$3,166 10	$2,001 52
Deductions—		
Other operating expenses	$820 93	----------
Non-operating taxes	541 14	$455 24
Interest on funded debt	3,600 00	3,600 00
Other interest	612 00	668 25
Total deductions	$5,574 07	$4,723 49
Total loss for year	$8,740 17	$6,725 01

Tuolumne Electric Company was organized March 18, 1903. Its report shows that it owns a 600 kilowatt hydroelectrical generating plant located on the Tuolumne River near Groveland, Tuolumne County. All of its electrical energy is sold to the Tuolumne Transmission Company, organized February 20, 1908, by some of the stockholders of Tuolumne Electric Company.

The Tuolumne Transmission Company has reported earnings and expenses as follows:

Item.	1913.	1914.
Operating revenues	$5,599 67	$8,233 55
Operating expenses	6,751 94	9,324 29
Net operating loss	$1,152 27	$1,090 74

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Deductions—		
Insurance		$187 11
Non-operating taxes		285 03
Interest expenses	$48 99	
Non-operating expenses	193 54	
	$242 53	$472 14
Deficit for year	$1,394 80	$1,562 88

Tuolumne Transmission Company has an accumulated deficit of $3,277.59. It sells no electrical energy for domestic purposes. All of its energy is sold to mines. At the present time the company has but three consumers.

The reports on file with this Commission show that the earnings of the Tuolumne Electric Company are inadequate to pay operating expenses and interest.

Applicant reports an accumulated deficit of $77,506.31. It has a first mortgage bonded indebtedness of $60,000.00 and a second mortgage bonded indebtedness of $28,000.00. The second mortgage bonds are held by stockholders, who have waived the payment of bond interest. In addition to the bonded indebtedness secured by a first and second mortgage, applicant on December 31, 1914, owed $12,665.10 in the form of notes payable and $26,586.44 in the form of accounts payable. Of the accounts payable, $26,418.32 is due the Tuolumne Transmission Company, which reports its total indebtedness as follows:

R. W. Hersey	$13,933 05
P. J. Dunne	15,603 19
E. J. Hersey	62 55
Star King Mine	345 48
West Side Lumber Company	708 98
Overdraft	1,657 10
Miscellaneous	527 89
Total	$32,838 24

Some years ago the financial outlook of Tuolumne Electric Company was more favorable than at present. The only solution which witness for applicant offered for the present financial condition, is the sale of the property to another power company. The evidence shows that negotiations for such sale are now pending. For that reason it is to the interest of applicant that its status quo be maintained.

Applicant does not ask authority to create, except as to accrued interest, a new indebtedness, but merely to continue its present obligations. Because of the financial condition of applicant, I do not believe that this Commission should authorize applicant to add the unpaid interest due to Tuolumne Transmission Company and to P. H. Mabury to the principal of the notes in favor of the respective parties.

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I herewith submit the following form of order:

ORDER.

Application having been made by Tuolumne Electric Company for an order authorizing the issue of promissory notes in the principal sum of $13,247.69, and a public hearing having been held, and it appearing to the Commission that for reasons set out in the foregoing opinion, said application, subject to the conditions of this order, should be granted,

It is hereby ordered by the Railroad Commission of the State of California that Tuolumne Electric Company be, and it is hereby, authorized to issue for a term not in excess of one year from the date of this order, its promissory notes to the following payees at the following rates of interest and in the following amounts:

Payee	Rate of interest	Face amount
Garden City Bank and Trust Company	7%	$10,000 00
Tuolumne Transmission Company	7%	2,100 00
P. H. Mabury	6%	459 10

It is hereby further ordered that the authority herein granted is granted upon the following conditions and not otherwise:

1. The notes herein authorized to be issued shall be issued in lieu of notes referred to in the foregoing opinion and issued without the authority of this Commission.

2. Applicant, within thirty days after the issuance of any note or notes herein authorized to be issued, shall report to this Commission the name of the payee, the term, rate of interest and face amount of each note issued; also the name of the payee, the term, rate of interest and face amount of the note canceled by the issuance of the note or notes herein authorized.

3. The authority herein granted to issue notes shall not become effective until applicant has paid the fee specified in section 57, as amended, of the Public Utilities Act.

4. The authority herein given to issue notes shall apply only to notes issued on or before October 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of August, 1915.

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DECISION NO. 2692.

IN THE MATTER OF THE APPLICATION OF HAPPY VALLEY LAND AND WATER COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE A NOTE.

Application No. 1814.

Decided August 14, 1915.

Applicant has four notes outstanding of the aggregate face value of $4,500.00, bearing interest at 7 per cent, which it desires to refund by the issue of a note of a like face value for a period of not to exceed two years. Application granted.

Roscoe D. Jones, for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of Happy Valley Land and Water Company, of Olinda, Shasta County, for authority to issue a promissory note in the sum of $4,500.00 to Rideout-Smith National Bank of Oroville, in order to refund four demand notes in favor of the same payee, as follows:

February	11,	1914,	$1,000.00, interest 7 per cent.
February	27,	1914,	$1,000.00, interest 7 per cent.
March	16,	1914,	$1,000.00, interest 7 per cent.
April	16,	1914,	$1,500.00, interest 7 per cent.

It appears from testimony offered at the hearing that the proceeds from the sale of the original notes were used principally in widening ditches, putting in new steel flume and constructing new extensions.

After a consideration of the evidence I am of the opinion that this application should be granted, and I submit the following form of order:

ORDER.

Happy Valley Land and Water Company having applied to this Commission for authority to issue a promissory note in the sum of $4,500.00, for the purpose of refunding four demand notes, as hereinbefore set forth, and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which said note is to be issued are not properly chargeable to operating expenses or to income,

It is hereby ordered that Happy Valley Land and Water Company be, and it is hereby, authorized to issue a promissory note to Rideout-Smith

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National Bank of Oroville in the principal sum of $4,500.00, for the purpose of refunding four promissory notes as follows:

February 11, 1914, $1,000.00, interest 7 per cent.
February 27, 1914, $1,000.00, interest 7 per cent.
March 16, 1914, $1,000.00, interest 7 per cent.
April 16, 1914, $1,500.00, interest 7 per cent.

The authority herein granted applicant to issue a promissory note is made upon the following conditions, and not otherwise:

1. The note herein authorized to be issued shall bear interest at not to exceed 7 per cent per annum, and shall mature not later than two years after the date thereof;

2. Within thirty days after the issue of the note herein authorized, applicant shall report to this Commission, stating the note issued and the note, or notes, canceled or refunded;

3. The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act;

4. The authority herein granted applicant to issue a promissory note shall apply only to such note as shall have been issued on or before January 31, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1915.

DECISION NO. 2693.

IN THE MATTER OF THE APPLICATION OF LANCASTER FEED AND FUEL COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK AND STOCK CERTIFICATES, AND ITS PROMISSORY NOTE SECURED BY MORTGAGE AND CERTAIN UNSECURED PROMISSORY NOTES.

Application No. 1813.

Decided August 14, 1915.

Lancaster Feed and Fuel Company applies jointly with Bertha A. Cameron for permission to transfer a certain warehouse at Lancaster from the latter to the former, the purchaser to issue in exchange therefor $9,000.00 par value of its capital stock and a $1,000.00 promissory note to be secured by a mortgage upon the warehouse properties. Application granted. Applicant also applies for permission to issue $15,000.00 face value of short term notes, which being for a period of not over one year, no authorization is necessary, such portion of the application accordingly dismissed.

Lawrence L. Larabee, for Applicant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

In this application Lancaster Feed and Fuel Company asks authority to issue $9,000.00 par value of capital stock; to issue its one-year 8 per cent secured promissory note in the principal sum of $1,000.00, and to issue unsecured notes for periods of one year or less in the principal sum of $15,000.00. Bertha A. Cameron also asks authority to sell a warehouse to Lancaster Feed and Fuel Company.

Applicant proposes to acquire the business and property of T. K. Temple and J. F. Swan, a partnership doing business at Lancaster, under the fictitious name of "Lancaster Feed and Fuel Company." No public utility business was conducted by the partnership. Applicant has also made arrangements to acquire a warehouse from Bertha A. Cameron.

Applicant was incorporated March 9, 1915, with an authorized capital stock of $25,000.00, divided into 250 shares of the par value of $100.00 each. On June 15, 1915, applicant amended its articles of incorporation so as to permit it to engage in the warehouse business. Applicant is engaged in the business of dealing, at wholesale and retail, in hay, grain, millstuffs, fuel and in conducting a general warehouse business, all at Lancaster, Los Angeles County. The warehouse business which applicant proposes to conduct will be incidental to its other business. It is the intention of applicant to separate as soon as possible its public utility business from its larger business of buying and selling hay, grain, feed, fuel, etc. Subsequent to its incorporation, applicant issued sixty-four and one-half shares of stock without authority from this Commission. The officers of the company upon having had their attention called to the violation of the Public Utilities Act, immediately proceeded to cancel the stock illegally issued and to bring the matter before the Commission.

The property which applicant desires to acquire from Lancaster Feed and Fuel Company, a partnership, and Bertha A. Cameron, is appraised by it at $9,766.02. In payment for the property to be acquired from the partnership, applicant desires to issue $9,000.00 par value of stock. To Bertha A. Cameron applicant desires to issue a one-year 8 per cent promissory note, the payment of which is to be secured by a mortgage covering the warehouse property.

Were this a corporation devoting all, or the major portion, of its property to public utility purposes, I would hesitate to recommend the issuance of stocks and notes in the amounts for which application has been made.

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As stated heretofore, applicant has asked authority to issue unsecured notes in the sum of $15,000.00. Inasmuch as applicant desires to issue these notes for periods less than one year, it is not necessary to obtain this Commission's approval. I, therefore, recommend that the application for authority to issue notes in the sum of $15,000.00 be dismissed.

I herewith submit the following form of order:

ORDER.

Lancaster Feed and Fuel Company, having applied to this Commission for authority to issue $9,000.00 par value of stock; to issue its one-year 8 per cent promissory note to Bertha A. Cameron in payment for a warehouse; to execute a mortgage to secure the payment of said $1,000.00 note, and to issue its unsecured note or notes in the sum of $15,000.00, said note or notes to be issued for a term of less than one year, and a public hearing having been held, and it appearing to the Commission that the purposes for which applicant desires to use the proceeds to be obtained from the issuance of the stock and the said $1,000.00 note are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Bertha A. Cameron be, and hereby is, given authority to sell to Lancaster Feed and Fuel Company a public warehouse located at Lancaster, California, and referred to in paragraph three of this application.

It is hereby further ordered that Lancaster Feed and Fuel Company be, and hereby is, given authority to issue its capital stock at par in the amount of $9,000.00, in payment for the property to be acquired from Lancaster Feed and Fuel Company, a partnership.

It is hereby further ordered that Lancaster Feed and Fuel Company be, and hereby is, given authority to issue to Bertha A. Cameron its one-year 8 per cent note in the sum of $1,000.00, said note to be payable March 13, 1916.

It is hereby further ordered that Lancaster Feed and Fuel Company be, and hereby is, given authority to secure the note issued to Bertha A. Cameron by a first mortgage on its warehouse property.

It is hereby further ordered that applicant's request for authority to issue notes in the sum of $15,000.00 be dismissed for the reasons stated in the foregoing opinion.

The authority herein granted is granted upon the following conditions and not otherwise:

1. The value of the property referred to in the foregoing opinion, or the purchase price herein authorized to be paid, shall not be binding upon this Commission, or any other rate fixing body, for rate fixing purposes or otherwise.

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2. The note herein authorized to be issued shall not be issued until applicant shall have filed with this Commission for approval a copy of the mortgage it desires to execute to Bertha A. Cameron.

3. Within thirty days after the issuance of the stock and note herein authorized to be issued, applicant shall report the facts of such issuance to this Commission.

4. The authority herein granted shall not become effective until the payment of the public utility fee prescribed by the Public Utilities Act.

5. The authority herein granted shall apply only to such stock and such note as may be issued on or before November 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1915.

DECISION NO. 2694.

IN THE MATTER OF THE APPLICATION OF THE DEL NORTE PEOPLES TELEPHONE COMPANY FOR CONSENT TO THE RENEWAL OF A CERTAIN NOTE.

Application No. 1771.

Decided August 14, 1915.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission in an order dated July 16, 1915 (Decision No. 2605), authorized Del Norte Peoples Telephone Company to issue for a period not exceeding one year, a note for the principal sum of $1,000.00, payable to Bank of Crescent City, with interest at the rate of 8½ per cent per annum, provided applicant submit to this Commission for approval a copy of the chattel mortgage securing the payment of said note; and

Whereas applicant has submitted for approval a copy of said chattel mortgage and has requested that this Commission's order, dated July 16, 1915 (Decision No. 2605), be amended so as to permit applicant to issue the said $1,000.00 note to E. C. Hegler instead of Bank of Crescent City; and good cause appearing,

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It is hereby ordered that this Commission's order dated July 15, 1915 (Decision No. 2605), be, and the same is hereby, amended so as to permit Del Norte Peoples Telephone Company to issue the note authorized in said order of July 16, 1915 (Decision No. 2605), to E. C. Hegler.

It is hereby further ordered that the chattel mortgage marked Exhibit "A," and attached to this application be, and the same is hereby, approved.

It is hereby further ordered that this Commission's order dated July 16, 1915 (Decision No. 2605), remain in full force and effect, except as modified by this first supplemental order.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1915.

DECISION No. 2695.

IN THE MATTER OF THE APPLICATION OF QUINCY WESTERN RAILWAY COMPANY FOR PERMISSION TO RENEW CERTAIN PROMISSORY NOTES AND TO EXECUTE A MORTGAGE TO SECURE THE SAME

Application No. 1805.

Decided August 14, 1915.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

This Commission, on August 9, 1915, having issued its order in the above entitled matter authorizing Quincy Western Railway Company to issue certain promissory notes and to execute a mortgage of its property, and the applicant now having submitted to this Commission a copy of said mortgage as Exhibit "C" in this proceeding,

It is hereby ordered that the form of mortgage submitted by the applicant as Exhibit "C" in this proceeding be and the same is hereby approved.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1915.

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DECISION No. 2696.

IN THE MATTER OF THE APPLICATION OF GEORGE W. KITCHEN TO SELL, AND THE MADERA GAS COMPANY TO BUY, A CERTAIN GAS PLANT LOCATED IN THE CITY OF MADERA, AND OF THE MADERA GAS COMPANY TO ISSUE STOCKS AND BONDS.

Application No. 729.

Decided August 14, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

This Commission, on October 2, 1913, having issued its order in the above entitled matter authorizing George W. Kitchen to sell a certain gas plant, the Madera Gas Company to purchase the same, and authorizing Madera Gas Company to issue $25,000.00 of bonds and 14,000 shares of its capital stock of the par value of $1.00 per share, and the applicant now having requested that this Commission issue a supplemental order authorizing the applicant to issue 1,000 shares of stock of the par value of $1.00 per share,

And it appearing that in Exhibit "C" attached to the application herein, the applicant had reported the issue of 1,000 shares of its capital stock to C. Kitchen; and it appearing that the sum of $1,000.00 was realized from the issue of said stock; and it appearing that an order should be issued authorizing the Madera Gas Company to issue 1,000 shares of stock to replace the 1,000 shares of stock heretofore issued to C. Kitchen, said stock having been issued for the purpose of obtaining funds to organize said Madera Gas Company,

It is hereby ordered that Madera Gas Company be granted authority, and it is hereby granted authority, to issue 1,000 shares of its capital stock of the par value of $1.00 per share, said stock to be issued in lieu of a like amount of stock heretofore issued to C. Kitchen, as reported by Madera Gas Company in Exhibit "C" attached to the application herein.

The stock herein authorized to be issued may be issued only after Madera Gas Company shall have called in and canceled 1,000 shares of its capital stock heretofore issued without authority from this Commission to C. Kitchen.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of August, 1915.

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Decision No. 2697.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided August 18, 1915.

Applicant was heretofore authorized to issue $266,000.00 face value of bonds, proceeds of which were to be deposited with trustee to be delivered to applicant as expenditures for improvements and extensions were incurred and applicant having already made expenditures covering $84,000.00 face value of such bonds, proceeds of which it desires to deposit in a special fund, original order amended accordingly.

Allen Chickering, for applicant.

Report of the Commission.

Loveland, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

In an order, dated June 30, 1915 (Decision No. 2550), this Commission authorized Western States Gas and Electric Company to issue $266,000.00 face value of its thirty-year 5 per cent first and refunding bonds, and $33,000.00 face value of its three-year 6 per cent notes due October 1, 1917. The bonds are to be sold at not less than 85 per cent of the face value plus accrued interest and the notes at not less than 93 per cent of the face value plus accrued interest. As requested by the applicant, the Commission ordered that the proceeds obtained from the sale of the bonds and notes shall be used to pay the cost of extensions, additions and betterments during the year ending May 1, 1916.

The Commission's order of June 30, 1915, contains among others the following condition:

> "The proceeds obtained from the sale of the bonds shall be deposited with the trustee, and delivered to the company as the work for the extensions, additions and betterments progresses."

In a supplemental application, Western States Gas and Electric Company alleges that on April 30, 1915, its unfunded construction expenditure entitled it, under its deed of trust, to issue bonds in the sum of $74,040.10. Through a misunderstanding, however, applicant requested that all the proceeds obtained from the sale of the bonds be

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deposited with the trustee. Inasmuch as the trustee has no interest in bonds heretofore authorized to the amount of $74,000.00, applicant requests that this Commission amend its order dated June 30, 1915, so as to permit it to deposit the proceeds obtained from the sale of said $74,000.00 face value of bonds, in accordance with applicant's usual custom, in a special fund to be used for extensions, additions and betterments to its plant subsequent to April 30, 1915.

Since April 30, 1915, to and including May 31, 1915, applicant reports an expenditure because of extensions, additions and betterments amounting to $14,363.51. This expenditure permits applicant to issue $10,000.00 face value of bonds. Applicant asks authority to sell at the price specified in the order dated June 30, 1915, $10,000.00 face value of bonds to reimburse itself for aforesaid expenditures.

To summarize, applicant requests this Commission to amend its order dated June 30, 1915, so as not to require it to deposit with the trustee the proceeds obtained from the sale of $84,000.00 face value of bonds authorized in said order of June 30, 1915.

I herewith submit the following form of supplemental order:

SECOND SUPPLEMENTAL ORDER.

Western States Gas and Electric Company having requested that section 5 of this Commission's order dated June 30, 1915 (Decision No. 2550), be amended, as indicated in the foregoing first supplemental opinion,

And good cause appearing,

It is hereby ordered that section 5 of this Commission's order dated June 30, 1915 (Decision No. 2550) be amended so as to read:

> "The proceeds obtained from the sale of $182,000.00 face value of bonds herein authorized, shall be deposited with the trustee, and delivered to the company as the work for the extensions, additions and betterments progresses."

It is hereby further ordered that Western States Gas and Electric Company be, and hereby is, given authority to use the proceeds obtained from the sale of $10,000.00 face value of bonds, the issuance of which was authorized by this Commission's order, dated June 30, 1915 (Decision No. 2550), to reimburse its treasury for capital expenditures from April 30, 1915, to May 31, 1915.

It is hereby further ordered that this Commission's order, dated June 30, 1915 (Decision No. 2550), shall remain in full force and effect, except as modified and amended by this second supplemental order.

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The foregoing first supplemental opinion and the second supplemental order are hereby approved and ordered filed as the first supplemental opinion and the second supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of August, 1915.

DECISION No. 2698.

IN THE MATTER OF THE APPLICATION OF TUJUNGA WATER AND POWER COMPANY FOR AN INCREASE OF RATE TO BE CHARGED AND PAID TO IT FOR FURNISHING, DISTRIBUTING AND SELLING ITS WATER TO THE PUBLIC USERS THEREOF AND ESPECIALLY TO THE INHABITANTS OF THOSE COMMUNITIES KNOWN AS TUJUNGA TERRACE AND HANSEN HEIGHTS.

Application No. 1493.

Decided August 19, 1915.

REPORT OF THE COMMISSION.

OPINION ON REHEARING.

A petition for a rehearing in this proceeding was received by the Commission from Dan and William Clemmons, protestants, on August 16, 1915, based upon alleged errors in the findings of the Commission in its decision on this application. Such petition was not presented to the Commission within the statutory time but is not denied alone upon that ground, but for the substantial reason that the allegations of error in the decision of the Commission are without merit.

While not answering the petition for rehearing in detail we shall call attention to some of the allegations contained therein.

Counsel for petitioner alleges that the schedule of rates recently established by the Commission will return to the company interest on investment, to which the defendant is not entitled. There is no certainty that these rates will return more than the amount necessary for operating the system and keeping it in repair. In this respect there is no error.

Counsel for petitioners had laid particular stress upon the power of this Commission to modify contractual relations between public utilities and consumers in cases such as the one in controversy. The Commission, however, finds no reason to change its opinion, as expressed in the decision on this application and in former decisions, upon this matter.

Counsel's contentions on other points are likewise without merit.

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ORDER DENYING PETITION FOR REHEARING.

Dan and William Clemmons having filed their petition for a rehearing herein, and the Railroad Commission finding that no good reason exists why a rehearing should be held.

It is hereby ordered that said petition be, and the same is hereby, denied.

Dated at San Francisco this 19th day of August, 1915.

Decisions Nos. 2699, 2700, grade crossings; not printed. See end of volume.

DECISION NO. 2701.

SOUTH SANTA ANITA IMPROVEMENT ASSOCIATION ET AL.

vs.

CALIFORNIA-MICHIGAN LAND AND WATER COMPANY.

Case No. 791.

Decided August 19, 1915.

L. K. Parks, and *R. H. Schwarzkopf*, for Complainants.

Anderson & Anderson, by *James A. Anderson*, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

The complaint in this case was heard by the Commission on April 30, 1915, and certain stipulations were entered whereby defendant agreed to construct a 10-inch main from its reservoir to the tract occupied by complainants in South Santa Anita.

The pipe line has been constructed and the Commission has been asked by the complainants to dismiss the action.

I submit the following form of order:

ORDER.

South Santa Anita Improvement Association, complainant herein, having made written request to the Railroad Commission that the complaint entitled as above be dismissed,

It is hereby ordered that this proceeding be, and it is hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of August, 1915.

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DECISION No. 2702.

CITY OF SAN GABRIEL

vs.

PACIFIC LIGHT AND POWER CORPORATION.

Case No. 828.

Decided August 19, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant having made written request, on August 18, 1915, that the above entitled proceeding be dismissed,

It is hereby ordered that the above entitled action be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 19th day of August, 1915.

DECISION No. 2703.

IN THE MATTER OF THE APPLICATION OF GLENDALE AND MONTROSE RAILWAY FOR AN INCREASE IN ITS 46- AND 52-RIDE COMMUTATION TICKETS BETWEEN MONTROSE AND LA CRESCENTA AND OTHER POINTS WITHIN THE VICINITY OF LOS ANGELES.

Application No. 1829.

Decided August 19, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

It appearing that the above entitled proceeding should properly be filed as a supplemental petition in Application No. 1517, being application of Glendale and Montrose Railway Company for an order authorizing change of rates.

It is hereby ordered that Application No. 1829 be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 19th day of August, 1915.

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DECISION NO. 2704.

IN THE MATTER OF THE APPLICATION OF MODESTO AND EMPIRE TRACTION COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ALONG B STREET IN THE CITY OF MODESTO, STANISLAUS COUNTY, CALIFORNIA.

Application No. 1720.

Decided August 20, 1915.

Modesto and Empire Traction Company applies for permission to construct a spur track along B street in the city of Modesto, which spur shall cross the track of the Tidewater Southern Railway Company, and applicant having reached an agreement with the latter named road which provides that its tracks be equipped with derails to protect such crossing, application granted.

L. L. Donnitt, for Applicant.

W. C. Peck, for Tidewater Southern Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed with the Commission on June 10, 1915. The Commission is asked herein to grant permission to applicant to construct a spur track along B street, in Modesto, crossing Eighth, Ninth, Tenth and Eleventh streets at grade. Exhibit "A," attached to the application, is a copy of a franchise granted by the city council of Modesto on June 9, 1915, giving permission to the applicant to construct its spur track at grade along B street and across the four streets mentioned.

Shortly after this application was filed the Tidewater Southern Railway Company constructed a track along Ninth street and across B street, and it is consequently necessary to consider the crossing of the tracks of the two railroads in connection with this application. The track of the Tidewater Southern was laid in accordance with a franchise obtained from the city of Modesto some three years ago, about which time also permission for this construction was obtained from this Commission.

The track the applicant proposes to construct is a spur track to serve the Pratt-Lowe Preserving Company. Service will be infrequent over it, and since the streets to be crossed at grade are open at their intersections with B street, and with the proposed track of the applicant, there is no objection to granting permission to cross these streets, as proposed.

Applicant has been negotiating with the Tidewater Southern, for an agreement covering the crossing of that company's line, since this

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application was filed, and the day previous to the hearing the latter company presented to applicant a tentative agreement covering the matter. A copy of this agreement was filed with the Commission as Tidewater Southern Railway Company's Exhibit "A." It is drawn up in the usual terms and provides that applicant shall pay the entire cost of installing the crossing, that the Tidewater Southern shall maintain it at a cost to be borne equally between the two companies, and that the track of the applicant shall be protected by suitable derails. This tentative agreement, with the exception of the clause requiring the installation of derails, is entirely agreeable to the applicant.

The installation of derails furnishes a cheap and efficient form of protection for railroad crossings. It makes certain that cars along the tracks on which they are located will stop before crossing the track intersections and protects the crossing from runaway cars. I believe that applicant can very well be required to install derails to protect its track at this crossing and am of the opinion that this application should be granted, subject to that condition and certain other conditions to be hereinafter specified, and I recommend the following form of order:

ORDER.

Modesto and Empire Traction Company, a corporation, having on June 10, 1915, applied to the Commission for permission to construct a spur track along B street at grade, in the city of Modesto, Stanislaus County, California, and a public hearing having been held, at which all interested parties were represented, and it appearing that this application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that applicant be, and hereby is, granted permission to construct its spur track at grade along B street and across Eighth, Ninth, Tenth and Eleventh streets at grade, and also across the track of Tidewater Southern Railway Company, at the intersection of Ninth and B streets, in the city of Modesto, Stanislaus County, California, subject to the following conditions and not otherwise, viz:

1. The entire expense of constructing the spur track along B street and across Eighth, Ninth, Tenth and Eleventh streets shall be borne by applicant.

2. The crossings of Eighth, Ninth, Tenth and Eleventh streets shall be constructed of a width and type of construction to conform to the portions of those streets now graded, with grades of approach not exceeding four (4) per cent; shall be protected by suitable crossing signs, and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

3. The crossing with the track of Tidewater Southern Railway Company shall be installed and maintained in accordance with the

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terms of the tentative agreement submitted to applicant by Tidewater Southern Railway Company and filed with this Commission as Tidewater Southern Railway Company's Exhibit "A."

4. After the installation of the crossing frogs at the intersection of the track of Tidewater Southern Railway Company with that of applicant, applicant shall, at its own expense, install, and thereafter maintain in proper operation, suitable derails on its track, and no engine, train, motor or car of applicant shall proceed over this crossing until it has been ascertained that it is entirely safe to do so.

5. All engines, trains, motors and cars of Tidewater Southern Railway Company, after the installation of the crossing frogs, shall approach this crossing under full control.

6. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of August, 1915.

Decision No. 2705, grade crossing; not printed. See end of volume.

DECISION No. 2706.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided August 24, 1915.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

It is hereby ordered that section 5 of this Commission's order, dated June 30, 1915 (Decision No. 2550), be amended so as to read:

"The proceeds obtained from the sale of $74,000.00 face value of bonds herein authorized shall be deposited by Western States Gas and Electric Company in a special account to be expended as the work for the extensions, additions and betterments progresses. The proceeds

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obtained from the sale of $10,000.00 face value of bonds herein authorized shall be delivered to the company to reimburse it for the extensions, additions and betterments made by it during the month of May, 1915, in accordance with its report accompanying said supplemental application; the remaining $182,000.00 face value of said bonds may be delivered to the company from time to time as reports showing the making of extensions, additions and betterments to its property are filed with, and approved by, this Commission."

It is further ordered that this third supplemental order shall supersede and be in lieu of the second supplemental order heretofore issued in this matter on August 18, 1915 (Decision No. 2697).

It is further ordered that said second supplemental order in this matter, dated August 18, 1915 (Decision No. 2697), be, and the same is hereby, ordered cancelled and annulled.

Dated at San Francisco, California, this 24th day of August, 1915.

Decisions Nos. 2707 and 2708, grade crossings; not printed. See end of volume.

DECISION No. 2709.

IN THE MATTER OF THE APPLICATION OF GLENDALE AND MONTROSE RAILWAY COMPANY FOR AN ORDER AUTHORIZING CHANGE OF RATES.

Application No. 1517.

Decided August 24, 1915.

Applicant heretofore applied and was granted permission to increase its passenger rates excepting its 46- and 52-ride commutation books, there being very little use of this class of transportation and it now appearing that patrons of applicant are now purchasing this class of transportation and applicant is not benefiting by the increases granted, it is permitted to increase 46- and 52-ride books between Eagle Rock, Glendale and Montrose to $3.00 and $4.05 respectively, and between Eagle Rock, Glendale and La Crescenta to $3.30 and $4.40 respectively.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL OPINION.

A petition has been filed by the Glendale and Montrose Railway for an order modifying this Commission's order of May 22, 1915, in the above entitled proceeding, by authorizing the establishment of the following commutation fares:

Between and	Eagle Rock or Glendale 46-ride	52-ride
Montrose	$3 00	$4 05
La Crescenta	3 30	4 40

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In the original proceeding applicant was granted permission to increase certain one-way and round-trip fares, but was refused authority to increase its 46- and 52-ride individual commutation fares for the following reasons:

> "Applicant's Exhibit No. 1 tends to show that but little demand exists for either children's 46-ride tickets or 52-ride individual commutation tickets, only 38 of the former and 4 of the latter having been sold during the months of January, February and March, 1915, and, since these fares are not unreasonably low and practically no traffic is involved, I recommend that no change be made therein."

The petition now presented furnishes information to the effect that the increases in fares authorized May 22, 1915, are not producing results anticipated, partly because 52-ride commutation tickets are being purchased in large numbers, thus breaking down the normal earnings expected from the other class of tickets. When original order was issued permitting increases in the one-way and round-trip fares, applicant voluntarily placed on sale 10-ride and 30-ride tickets at reduced rates, and it was presumed that these tickets would be used instead of the old form of 52-ride commutation tickets. This, however, has not proven to be a fact.

It is to be noted that at the present rate of $3.50 for a 52-ride commutation ticket between Glendale or Eagle Rock and Montrose or La Crescenta it requires but 18 round-trips to Montrose and but 14 round-trips to La Crescenta to cover the value of the tickets based on the increased round-trip fares authorized by this Commission, and because of this situation, commutation tickets are being purchased instead of round-trip tickets or the 10- and 30-ride tickets.

The financial difficulties of the Glendale and Montrose Railway have been before the Commission in a number of cases and its affairs carefully investigated. It certainly was not the intention of the Commission in the order issued May 22, 1915, to place any stumbling blocks in the way of the company securing the full effect of the decision, and the increases in commutation fares would have been granted at that time had the situation which has since developed been in evidence.

I recommend that the application be granted and submit the following form of supplemental order:

SUPPLEMENTAL ORDER.

It is hereby ordered that the Glendale and Montrose Railway be, and the same is hereby, granted authority to publish and make effective, within 20 days from the date of this order, the following commutation fares:

Between	Eagle Rock or Glendale	
and	46-ride	52-ride
Montrose	$3 00	$4 05
La Crescenta	3 30	4 40

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The foregoing supplemental opinion and order is hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of August, 1915.

DECISION No. 2710.

IN THE MATTER OF THE INVESTIGATION BY THE RAILROAD COMMISSION UPON ITS OWN INITIATIVE INTO THE FINANCIAL CONDITION OF UNITED RAILROADS OF SAN FRANCISCO.

Case No. 610.

Decided August 24, 1915.

Respondent having been heretofore directed to maintain an annual depreciation fund of $550,000.00 for the fiscal years ending June 30, 1915, 1916, and 1917, contends that owing to present conditions it is unable to set aside the amount named and it presenting no good reason why such original order should be modified other than to extend the time in which such fund shall accrue, original order amended to provide that respondent set aside the required amounts annually for the fiscal years ending June 30, 1916, 1917 and 1918 and also to provide that if for any one month it is unable to set aside the required $45,833.33, application may be made to the Commission to provide for a lesser amount, the balance to be made up in subsequent months when sufficient funds are available.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

On May 17, 1915, this Commission rendered a decision in the above entitled matter (Decision No. 2397) and issued its order directing United Railroads of San Francisco to establish a depreciation fund in the sum of $550,000.00 annually for the fiscal years ending June 30, 1915; June 30, 1916; and June 30, 1917, "or until the further order of this Commission."

This order provided that this depreciation account should be established so as to show an appropriation from earnings of $550,000.00 not later than June 30, 1915. Provision was made whereby the sum for this depreciation account should accrue thereafter in equal monthly installments of $45,833.33. Provision was further made whereby $300,000.00 of this sum appropriated as a depreciation reserve should be used for certain specified purposes when approved by this Commission, and the balance of $250,000.00 per year should be used by the United Railroads of San Francisco "without the further order of the Commission, for the customary purposes to which its funds heretofore accumulated for depreciation have been used."

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The order further directed that United Railroads of San Francisco should, within thirty days from the date of the order, present to the Commission for its approval, a proposed change and correction of its books of accounts to show the true financial condition of the company as to deficit.

The applicant has now applied for a rehearing and the order has accordingly been extended from time to time.

In its application for a rehearing, United Railroads of San Francisco directs the attention of this Commission to various matters in connection with its accounts, the regulations of this Commission governing such accounts, and the issues involved in determining an adequate depreciation account for this company. We find no merit in the points presented as to these matters.

As a further basis for its application for rehearing, United Railroads of San Francisco represents that it will not have sufficient funds to set aside from its earnings the sum of $300,000.00 on July 15, 1915, as a special fund as required by the order of this Commission.

The petition states further:

> "Furthermore, because of causes beyond our control and which affect our revenue, we are unable to say whether we will be able or have the ability to set aside the sum of $45,833.33 per month within fifteen days after the first of each month following July 15, or at all, as required by your order."

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A comparative statement of the earnings and expenses of United Railroads for the calendar years ending June 30, 1914, and June 30, 1915, shows a decrease in the company's revenues as follows:

	Year ending June 30, 1914	Year ending June 30, 1915	Increase or decrease
Operating revenues	$8,515,893 73	$8,030,275 12	—$485,618 61
Operating expenses	4,722,736 86	4,757,826 54	35,089 68
Net operating revenues	$3,793,156 87	$3,273,448 58	—$520,708 29
Miscellaneous income:			
Interest on deposits	$110 79		—$110 79
Income from securities owned	47,172 05	$175,218 76	128,046 71
Other miscellaneous income	3,232 19	8,676 34	5,444 15
Totals	$50,515 03	$183,895 10	$133,380 07
Gross income less operating expenses	$3,843,671 90	$3,456,343 68	—$387,328 22
Deductions from income:			
Taxes	$503,800 00	$516,000 00	$12,200 00
Interest:			
On funded debt	1,719,964 65	1,691,660 77	—28,303 88
On floating debt	206,291 35	192,998 58	—13,295 77
Rents of leased lines	126,600 00	176,400 00	49,800 00
Other deductions	5,573 38		—5,573 38
Total deductions	$2,562,232 38	$2,577,059 35	$14,826 97
Net income	$1,281,439 52	$879,284 33	—$402,155 19
Disposition of net income:			
Reserve for mortgage sinking funds	$382,134 50	$376,035 90	—$6,098 60
Seven per cent dividend on $5,000,000.00 on first preferred stock	350,000 00		—350,000 00
Totals	$732,134 50	$376,035 90	—$356,098 60
Surplus for year	$549,305 02	$503,248 43	—$46,056 59

To meet this situation it will be necessary only to postpone the beginning of the depreciation fund so that it may accrue during the fiscal years ending June 30, 1916, June 30, 1917, and June 30, 1918. Provision may also well be made that the sum to be placed in this depreciation account may be modified if the earnings of the company should be insufficient to make up the full $550,000.00.

This investigation included an exhaustive inquiry into the financial affairs of this corporation, required by reason of the deflection of the sum of $1,096,000.00 from proper corporate purposes.

We see no reason why the order should not stand. It will be necessary only to accumulate the depreciation fund over the fiscal years 1916, 1917 and 1918 instead of 1915, 1916 and 1917. This will require certain accompanying modifications of the order.

In conformity with the views herein expressed, the following supplemental order is hereby made:

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FIRST SUPPLEMENTAL ORDER.

It is hereby ordered by the Railroad Commission of the State of California that its order in the above entitled matter, dated May 17, 1915 (Decision No. 2397), be amended, and it is hereby amended, by substituting for that portion of said order, beginning with line No. 8 on page 26 of the original typewritten copy of said order and extending to the words "Dated at San Francisco, California, this 17th day of May, 1915," the following words:

It is hereby ordered that United Railroads of San Francisco establish a depreciation account amounting to $550,000.00 per annum until June 30, 1918, or until the further order of this Commission.

It is further ordered that said sum of $550,000.00 per annum to be carried and set up in a depreciation account as aforesaid shall be set aside and accrued out of the annual earnings of said company. Said depreciation account shall be established so as to show an appropriation from earnings of $550,000.00 not later than June 30, 1916, and beginning with the month of July, 1915. On July 31, 1915, and monthly thereafter said depreciation account shall be credited out of earnings with the sum of $45,833.33 per month, up to and including June 30, 1918, or until the further order of this Commission. Money accumulated under this order shall be used and expended as follows:

The sum of $45,833.33 per month shall be placed in a bank or banks in the State of California, said money to be placed in said bank or banks within thirty days after the last day of each month; the first payment into said bank or banks to be for the month of July, 1915, and to be made not later than August 30, 1915. Of the money so accumulated, $25,000.00 per month, or $300,000.00 annually, shall be used and expended only—

(*a*) For the construction of additional facilities or extensions and for the fulfilling of franchise obligations of said company; or,

(*b*) For the improvement of service; or,

(*c*) For such other purposes properly chargeable to a depreciation account as may be authorized by this Commission upon application of said United Railroads of San Francisco.

Of such sums as may be accumulated under the order herein, $25,000.00 per month, or $300,000.00 per year, or any part of said $25,000.00 per month, or said $300,000.00 per year, shall be expended only after United Railroads of San Francisco has submitted a statement to the Railroad Commission of the State of California setting out the purposes for which it is proposed to make expenditures, and has received the Commission's authorization approving such expenditures.

Of the sum of money hereby ordered to be carried in the depreciation account, $250,000.00 per annum, or $20,833.33 per month, or any part of said $250,000.00 per annum, or said $20,833.33 per month, may be

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used by United Railroads of San Francisco without the further order of this Commission for the customary purposes to which its funds heretofore accumulated for depreciation have been used.

It is hereby provided as a condition of this order that if the revenues of United Railroads of San Francisco for any one month, after the payment of operating expenses, taxes, license fees, percentage of receipts due under franchises, and after setting aside a sufficient pro rata sum for the payment of interest and sinking fund obligations, shall be less than $45,833.33, United Railroads of San Francisco shall file with this Commission on or before thirty days after the last day of such month, a statement showing its earnings and necessary expenses for such month as heretofore specified in this paragraph, and may make application for a modification of the amount required to be added monthly under this order to said depreciation account; but the amount by which said monthly sum of $45,833.33 may be reduced by order of this Commission for any one month, shall be added to the amount to be paid in the succeeding month or months until paid.

It is further ordered that United Railroads of San Francisco shall, within thirty days from the date of this order, present to the Commission for its approval a proposed change and correction of its books of account which shall show and reflect the true financial condition of said company as to deficit.

Dated at San Francisco, California, this 24th day of August, 1915.

DECISION NO. 2711.

IN THE MATTER OF THE INVESTIGATION BY THE RAILROAD COMMISSION UPON ITS OWN INITIATIVE INTO THE FINANCIAL CONDITION OF THE UNITED RAILROADS OF SAN FRANCISCO.

Case No. 610.

Decided August 24, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

United Railroads of San Francisco heretofore filed its petition in the above entitled proceeding asking for a rehearing. Certain of the matters to which petitioner referred have been covered by first supplemental opinion and order which is today being filed herein. We have given careful consideration to all the points urged by petitioner, and find no merit in any of them other than as indicated in said first supplemental opinion and order.

The petition for rehearing should be denied.

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ORDER DENYING PETITION FOR REHEARING.

United Railroads of San Francisco having filed a petition for rehearing in the above entitled proceeding, and careful consideration having been given to the same, and no good reason appearing why said petition should be granted,

It is hereby ordered that said petition be, and the same is hereby, denied.

Dated at San Francisco, California, this 24th day of August, 1915.

Decision No. 2712, grade crossing; not printed. See end of volume.

DECISION NO. 2713.

CLARA J. WILSON

vs.

McEWEN BROS.

Case No. 629.

Decided August 24, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled proceeding having made written request that the action be dismissed,

It is hereby ordered that the same be, and it is hereby dismissed, without prejudice.

Dated at San Francisco, California, this 24th day of August, 1915.

DECISION NO. 2714.

NEWMARK GRAIN COMPANY

vs.

SOUTHERN PACIFIC COMPANY AND THE SOUTHERN PACIFIC RAILROAD COMPANY.

Case No. 814.

Decided August 26, 1915.

Complainant alleges that it forwarded 46 carloads of hay from Dreyfus Spur, in the city of Anaheim, to Los Angeles, and that defendant company assessed thereon a charge of $1.40 per ton. That as defendant maintains a rate of $1.00 per ton

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on hay from West Anaheim, to Los Angeles, both points being within the city limits of Anaheim, the $1.40 rate is excessive and unjust, and that it is entitled to reparation in the sum of $251.62.

Held, That the maintenance of two such rates from points within the city limits of a small town is unjust and discriminatory, defendant directed to establish a rate of $1.00 per ton on hay from Dreyfus Spur to Los Angeles and complainant awarded reparation in the sum of $251.62.

Albert N. Norton, for Complainant.

George D. Squires, for Defendants.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is a complaint filed by the Newmark Grain Company, a corporation, engaged in the business of buying and selling hay and grain and its kindred products. The allegation is that 46 carloads of hay were forwarded, May 20, 1914, to June 26, 1914, from Dreyfus Spur in the city of Anaheim to Los Angeles, upon which charges were assessed at rate of $1.40 per ton. This rate, it is claimed, was not the rate set forth in defendants' tariff, and complaint alleges that said rate should have been $1.00 per ton, as quoted by agent of defendants at West Anaheim, the billing station. During the hearing the complaint was amended to also allege that the rate, in addition to being contrary to published tariff, was unjust, discriminatory and excessive. Reparation is asked in the sum of $251.62.

The evidence was directed largely to the discriminatory feature of the rate adjustment and to the fact that Dreyfus was unknown to shippers as an independent station. Dreyfus is in the city limits of Anaheim, between West Anaheim and Miraflores, on what was formerly the main line of the Southern Pacific Company. It is twenty-eight miles from Los Angeles, being eight-tenths of a mile, or about 4,200 feet, south of West Anaheim, while the station known as Anaheim is 28.4 miles south of Los Angeles. It will thus be seen that the three stations in the city limits of Anaheim are practically the same distance south of Los Angeles, viz, West Anaheim, 27.2 miles; Dreyfus Spur, 28 miles; and Anaheim, 28.4 miles, Anaheim depot being on the loop track east of West Anaheim.

Complainant's testimony is in substance to the effect that the hay was purchased by the Newmark Grain Company at Fullerton, a point where the rate is $1.00 per ton to Los Angeles, and was teamed to Dreyfus Spur, that before being teamed to the Dreyfus Spur warehouse for storage the freight rate was secured from the agent at West Anaheim, that later when the hay was sold a representative of the purchaser verified the $1.00 rate, also, that the agent knew where the hay was to be loaded, it being his duty to furnish the cars and waybill the hay; further, that some 25 cars were billed at $1.00 per ton and charges originally collected on that basis.

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Testimony showed that all class rates, and the carload commodity rates on vegetables, wine grapes, wine, flour, etc., are the same from Dreyfus as from West Anaheim. It was also shown that the rate of $1.40, Dreyfus to Los Angeles, was excessive when compared with rates from points equidistant from Los Angeles.

Complainant also introduced evidence to the effect that the hay was sold on basis of the freight rate of $1.00 per ton, and the difference between this rate and $1.40 per ton, amounting to $251.62, was deducted by the purchaser from the invoiced price of the hay.

The testimony of the Southern Pacific Company is to the effect that the charges as collected were in conformity with the published tariff; that the hay rates in this territory were established many years ago in zones; the first zone of $1.00 per ton extending from Vinvale to and including West Anaheim, the second zone of $1.40 per ton taking in all of the territory south of West Anaheim to Newport Beach, except a few stations east of West Anaheim, which were given a rate of $1.25 per ton. At the time the rates were made no hay was being forwarded from Dreyfus Spur, and it is practically admitted that there would have been no difference in rates had the spur been a hay shipping point.

The fact that Dreyfus, a point about 4,200 feet from the agency station at West Anaheim, and within the same incorporated city limits, should have a different and higher rate presents a ridiculous situation, which is even more apparent when consideration is given to the testimony, that the defendants' agent at West Anaheim, knowing where the hay was to be loaded, quoted the West Anaheim rate, no doubt with the impression that Dreyfus was within the yard limits of his station. The further fact that the spur track was not designated by a station signboard was also misleading to all interested parties.

I am convinced it is not the practice in rate making to establish two sets of rates within the city limits of small communities, and certainly in this instance the rates should not be on a different basis for an additional service of but 4,200 feet.

I find as a fact that the rate of $1.40 per ton on hay, Dreyfus to Los Angeles, is excessive and discriminatory, and should not exceed the rate of $1.00 per ton, the same as is in effect from West Anaheim to Los Angeles.

Upon the record I find that the charges assessed on the shipments here involved were unlawful to the extent that they exceeded those accruing on the basis of a rate of $1.00 per ton from Dreyfus to Los Angeles. I further find that complainant made the shipments and bore the excess charges thereon, that it has been damaged and is entitled to reparation in the sum of $251.62, with interest at rate of 7 per cent per annum.

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I submit herewith the following form of order:

ORDER.

Newmark Grain Company, Inc., having filed a complaint in the above numbered proceeding, and a public hearing having been held thereon, and a full investigation of the matters and things involved having been had, and the Commission having made the findings of fact which are contained in the opinion which precedes this order and on which the order is based,

It is hereby ordered that the Southern Pacific Company publish and file in a tariff with this Commission, to become effective twenty days from the date of this order, a rate of $1.00 per ton of 2,000 pounds on hay in carloads from Dreyfus to Los Angeles, which rate is found to be just and reasonable and is hereby established as a just and reasonable rate to be charged in lieu of the present rate of $1.40 per ton which is found to be unjust, unreasonable and discriminatory.

It is further ordered that the Southern Pacific Company, defendant, refund to Newmark Grain Company, Inc., complainant, the sum of $251.62 paid by said defendant for the transportation of 46 cars of hay from Dreyfus to Los Angeles, May 20, 1914 to June 26, 1914, in excess of the rate of $1.00 per ton found to be just and reasonable, and that said defendant pay to said complainant in addition thereto, 7 per cent interest.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of August, 1915.

DECISION NO. 2715.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO DISCONTINUE THE MAINTENANCE OF AN AGENT AT ITS STATION OF APPLEGATE.

Application No. 1704.

Decided August 26, 1915.

Applicant applies for permission to abandon its agency at Applegate Station and it appearing that the business moving through this station does not require the services of an agent, applicant permitted to abandon this agency after October 31, 1915, and to maintain a caretaker for six months thereafter or until further order of this Commission and to keep an accurate account of the business transacted during such period.

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Geo. W. Squires, for Applicant.

A. L. Crane, for Placer Forest and Home Protective Association, Protestant.

J. A. Livingstone, for Protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of the Southern Pacific Company for permission to discontinue the maintenance of an agent at its station of Applegate, in Placer County, on the Sacramento Division until such time as the volume of traffic will warrant re-establishment, it being alleged that the revenue derived at this station does not warrant the continuance of an agent. A public hearing was held at Applegate on August 23, 1915, and the matter is now ready for decision.

The station of Applegate is located on the Sacramento Division of the Southern Pacific Company and is 45.4 miles from Sacramento. The nearest agency station west of Applegate is Clipper Gap, distant 3.0 miles; the nearest agency station east is Colfax, distant 8.2 miles. At the time of double tracking of the Sacramento Division between Roseville and Blue Canyon the grade for the second track was made regardless of the location of the single track, and the location of the second track was such that heavy grades were avoided, thereby facilitating operation. By reason of this there are a number of towns on the Sacramento Division, among them the town of Applegate, where the station on the eastbound track is some distance from the station on the westbound track, and in such cases it is the practice of the Southern Pacific Company to maintain one of the stations as an agency and to maintain the other as a non-agency.

The station at Applegate where an agent is maintained is on the old line which is used as the westbound track. This station is about one-half mile distant from the non-agency station maintained on the eastbound track. The agent at Applegate does not in any way serve the company, or its patrons who may have occasion to use the non-agency station on the eastbound track.

The business transacted at the agency station of Applegate according to statements filed by the applicant, Southern Pacific Company, as exhibits at the hearing, shows the following results for the year ending July 31, 1915:

Freight.

	Tons	Revenue
Less than carload forwarded	69	$383 00
Less than carload received	310	1,261 00
Carload forwarded	18	100 00
Carload received	177	260 00
Total freight revenue		$2,004 00

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Passenger.	
Number of tickets sold (local and interline)_____1,167	
Revenue from tickets sold (includes Southern Pacific Company's proportion of earnings on interline tickets) _____	$1,868 00
Total revenue _____	$3,872 00

The expense of maintaining an agent for the westbound business at the town of Applegate is made up of the salary of the agent, amounting to $960.00, and the cost of station supplies, amounting to approximately $100.00, a total of $1,060.00 for a twelve months' period. This indicates that an expenditure of 27.38 per cent of the revenue derived from the business at Applegate has been necessary for its maintenance as an agency during the year ending July 31, 1915.

The station at Applegate serves a community largely engaged in fruit growing, especially pears, peaches and plums. There are a number of mountain resorts which rely on the patronage furnished by residents of the cities surrounding San Francisco Bay. Due to the location of the stations at Applegate, one serving the eastbound track as a non-agency, the other serving the westbound track as an agency, neither the applicant, Southern Pacific Company, or its patrons at Applegate derive the benefit from the services of an agent that should be enjoyed, and it was explained at the hearing that the agreement of the applicant with its telegraph operators prohibited the use of an agent and operator in the serving of two separate stations located as are those at Applegate. The travel to the mountain resorts above mentioned is cared for by round-trip tickets which are purchased at the station where passengers originate, hence a considerable amount of revenue that would accrue to Applegate for the return portion of the trip was not included in the statements of the applicant which were introduced as evidence at the hearing. These patrons of the company, however, require the services of the agent in validating the return portion of round-trip tickets, in the checking of outgoing baggage and in the furnishing of information relative to trains, and they are entitled to service notwithstanding the fact that the revenue from their ticket purchases might be assigned by the applicant to the stations at which the round-trip tickets were sold.

It was suggested at the hearing of this application that an amicable adjustment in the interest of both the applicant and the protestants might be arrived at by the appointment of a caretaker who would meet all trains, both east and westbound, during the usual daylight hours, who would assist passengers in the handling of outgoing baggage and would receive and deliver incoming baggage upon the surrender of checks therefor. The caretaker would assist shippers in the preparation of the necessary documents for outgoing less than carload freight

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and would receive and place in the warehouse less than carload freight which might arrive at Applegate and note as representative of the consignee any shortage, loss or damage in the same manner that would be done if a regular agent were employed. The caretaker would not sell or validate tickets nor quote freight rates or collect amounts due on incoming freight received or prepaid freight forwarded. It was agreed by the attorney for the applicant, Southern Pacific Company, and also the interested protestants, that a trial of a caretaker under the conditions above noted would be satisfactory in that such service would render available some assistance to the traveling public at the non-agency station on the eastbound track where no aid has heretofore been rendered by the company in providing for its incoming patrons.

I am of the opinion that until the present fruit shipping season is ended that the agent should be retained at the present agency station at Applegate and that on November 1, 1915, a caretaker should be substituted for a period of six months and thereafter until otherwise ordered by this Commission.

I, therefore, recommend the following form of order:

ORDER.

The Southern Pacific Company having made application to this Commission for permission to discontinue the maintenance of an agent at its station of Applegate on its Sacramento Division until such time as the business transacted at such station would justify the restoration of an agent, a public hearing having been held and the Commission being fully advised in the premises,

It is hereby ordered that the applicant, Southern Pacific Company, continue the maintenance of an agent at its station of Applegate until November 1, 1915; and,

It is further ordered that the applicant, Southern Pacific Company, be required to maintain a competent caretaker at its station of Applegate for a period of six months from November 1, 1915, and thereafter until the further order of this Commission. The duties of said caretaker shall include the keeping open of the station at Applegate for the comfort and convenience of the patrons of the applicant; the assisting of shippers in the preparation of shipping documents for outgoing less than carload freight; the receiving and placing in warehouse of incoming less than carload freight and the noting for the account of consignee of any exceptions as to shortage, loss or damage in the same manner that would be in evidence were a regular agent employed; the rendering of assistance to passengers in the forwarding of outgoing baggage and the receipt of incoming baggage and delivery of same upon surrender of checks therefor. The services of the caretaker as herein provided are to apply to both the present agency and

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also to the non-agency station at Applegate as regards assistance to be given the patrons of the applicant in the transaction of their business. The caretaker is not to sell tickets, quote freight or passenger rates, nor to collect charges on incoming freight shipments or prepaid outgoing freight shipments.

It is also further ordered that the applicant, Southern Pacific Company, keep a true and accurate account for a period of six months from November 1, 1915, of all business transacted at its station at Applegate and submit same to this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of August, 1915.

DECISION No. 2716.

IN THE MATTER OF THE APPLICATION OF R. W. ELLIOTT TO SELL AND OF GARDEN GROVE CITY WATER COMPANY TO BUY CERTAIN PUBLIC UTILITY PROPERTY, AND TO ISSUE CERTAIN SECURITIES.

Application No. 1795.

Decided August 26, 1915.

R. W. Elliott, owning a small water system in the town of Garden Grove, is authorized to transfer such system to the Garden Grove City Water Company for a consideration of $6,471.75, and the latter company authorized to issue 450 shares of its common capital stock of the par value of $10.00 per share, and two promissory notes aggregating the sum of $3,471.75, such stock and notes to be issued partly in payment for the water system, the balance for additions and betterments thereto.

R. W. Elliott, in propria persona.

J. A. Knapp, for Garden Grove City Water Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of R. W. Elliott to sell a small domestic water system located in the town of Garden Grove, Orange County, to the Garden Grove City Water Company, and of the latter company to purchase the same and to issue stock and notes, and mortgage its property in connection therewith.

It appears that Garden Grove City Water Company was incorporated on August 6, 1914, under the laws of the State of California,

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and that in October of the same year, the water system of R. W. Elliott was transferred to it without authority from this Commission. Upon having attention called to the matter, the present application was filed.

I am satisfied that the transfer of this property and the issue of stock and notes and execution of mortgage in connection therewith was undertaken in ignorance of the law and not from any desire to evade the provisions of the Public Utilities Act.

The price proposed to be paid R. W. Elliott for his property by Garden Grove City Water Company is set forth in an amended application filed August 13, 1915, and is as follows:

350 shares of stock of Garden Grove City Water Company at the par value of $10.00 per share	$3,500 00
Cash	500 00
Note	2,471 75
Total	$6,471 75

The note in the sum of $2,471.75 to be issued to R. W. Elliott as part of the purchase price is to run for five years after date, and is to bear interest at 7 per cent per annum and is to be secured by two mortgages covering the real and personal property sought to be transferred.

Garden Grove City Water Company also asks for authority to issue 100 shares of stock to provide funds for additions and betterments.

Final determination of this portion of the application must be withheld pending the filing of further information by the company as to the exact nature of the additions and betterments which it has made, or proposes to make.

The company also asks for authority to issue a promissory note to E. Schneider in the sum of $1,000.00, bearing interest at 7 per cent per annum and maturing two years after date—one-half of the proceeds to be used in making the cash payment to R. W. Elliott and the balance to be used in putting in a new pipe line connecting the company's plant Number 2 with the main distributing system.

Mr. Elliott has operated his system in Garden Grove for approximately six years. On August 8, 1914, he secured a forty-year franchise from the county of Orange at a cost of $100.00. By its terms the grantee is obligated to pay the county annually 2 per cent of its gross annual receipts after the first five years. This franchise Garden Grove City Water Company also proposes to acquire.

Garden Grove City Water Company has an authorized capital stock issue of 2,500 shares of the par value of $10.00 per share. Certain of this stock has been issued without authority from this Commission, and it will be necessary for the company to recall this stock and substitute properly issued stock therefor. This the company will be

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enabled to do as soon as it has filed with the Commission a satisfactory statement as to the purposes for which the stock was originally issued, and has secured from this Commission a supplemental order authorizing such issue.

According to the financial statement filed by the company in connection with its amended application herein, it has no bonds outstanding and its indebtedness, other than that incurred without authority from this Commission in connection with the acquisition of property of R. W. Elliott, consists of a six months promissory note in the sum of $600.00, and miscellaneous accounts payable in the sum of $146.80.

Annual reports filed with the Commission by R. W. Elliott and Garden Grove City Water Company show earnings for this system as follows:

	1913	1914
Operating revenues	$900 50	$1,128 17
Operating expenses	852 20	944 61
Net operating revenue	$108 30	$183 56

After a consideration of the evidence submitted by the applicants, I am of the opinion that this application should be granted and I accordingly submit the following form of order:

ORDER.

R. W. Elliott having applied to this Commission for authority to sell certain water utility property to Garden Grove City Water Company, and the latter company having applied for authority to acquire said property and to issue stock and notes and to mortgage its property as hereinbefore set forth; and it appearing to this Commission that applicants' request is reasonable and should be granted, and that the purposes for which it is proposed to issue said stock and notes are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that R. W. Elliott be, and he is hereby, authorized to transfer to Garden Grove City Water Company the water system now owned and operated by him in Garden Grove, Orange County, including that certain real property more fully described in Exhibit "A" attached to this order, and including also a certain franchise granted to said R. W. Elliott by the county of Orange on August 8, 1914;

It is further ordered that Garden Grove City Water Company be, and it is hereby, authorized to issue 450 shares of its common capital stock as follows:

350 shares to R. W. Elliott in part payment for the above described property, and

100 shares to provide for additions and betterments to its plant and system

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It is further ordered that Garden Grove City Water Company be, and it is hereby, authorized to issue two promissory notes as follows:

Payee	Term	Interest rate	Principal
R. W. Elliott	5 years	7 per cent	$2,471 75
E. Schneider	2 years	7 per cent	1,000 00

It is further ordered that Garden Grove City Water Company be, and it is hereby, authorized to secure the above mentioned note to R. W. Elliott by two mortgages covering the real and personal property herein authorized to be transferred, said mortgages to be substantially of the form submitted by applicant in connection with its amended application herein and marked Exhibit "A."

The order herein made is granted upon the following conditions, and not otherwise:

1. The purchase price for the property herein authorized to be transferred shall not hereafter be binding upon this Commission or any other public body as representing for rate fixing or other purposes the real value of said property.

2. None of the stock herein authorized to be issued by Garden Grove City Water Company for additions and betterments shall be issued until said company shall have filed with this Commission a statement setting forth the purposes for which said stock is to be issued, and shall have received from this Commission a supplemental order approving the same.

3. Garden Grove City Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and evidences of indebtedness hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or sales of said stock and evidences of indebtedness during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted is conditioned upon the payment of the fee prescribed in the Public Utilities Act.

5. The authority herein granted for the transfer of property, issue of stock and notes and execution of mortgages shall apply only to such transfer of property, issue of stock and notes and execution of mortgages as shall have taken place on or before March 1, 1916.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of August, 1915.

EXHIBIT "A."

"Lot One (1) of "Elliott's Addition to Garden Grove," as shown on a map recorded in Book 4, page 73, of Miscellaneous Maps, records of Orange County, California.

Lot Twenty (20) in Block "B" of Flagg's Addition to Garden Grove," as shown on a map recorded in Book 4, page 15 of Miscellaneous Maps, records of Orange County, California.

Reserving therefrom a strip of land 5 feet wide off the west end for alley and pipe line purposes.

Including all buildings and improvements thereon or that may be erected thereon, together with all and singular the tenements, hereditaments and appurtenances, water and water rights thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof."

DECISION NO. 2717.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1841.

Decided August 30, 1915.

Southern California Gas Company applies for and is granted permission to renew eight promissory notes of a total face value of $48,292.13, such notes to be issued for a period of not to exceed one year from December 31, 1915.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of promissory notes for the purpose of renewing eight notes now due or soon to become due. The notes will be specified in the order herein.

A public hearing was held in Los Angeles on August 23, 1915. The evidence shows that the outstanding eight notes or the proceeds thereof were used by applicant for the acquisition of property or for the construction, extension, and improvement of its facilities and service, and that all of such expenditures are properly chargeable to capital account.

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ORDER.

Southern California Gas Company having applied for an order authorizing the issue of promissory notes in renewal of the notes hereinafter set forth, and a public hearing having been held on said application, and it appearing that the purposes for which said notes or the proceeds thereof were used were not in whole or in part reasonably chargeable to operating expenses or income, and that the application should be granted,

It is hereby ordered that Southern California Gas Company be and the same is hereby authorized to issue its promissory notes for terms not to exceed one year from December 31, 1915, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same payees as at present, in renewal of the following notes:

Payee	Amount	Interest rate	Maturity
Virginia Pipe Line Contracting Company--	$1,000 00	8%	Aug. 8, 1915
Sprague Meter Company----------	10,625 11	6%	Aug. 28, 1915
Geo. M. Clark & Company----------	2,000 00	7%	Aug. 28, 1915
The J. G. White Engineering Corporation---	3,036 70	6%	Aug. 29, 1915
The J. G. White Engineering Corporation---	5,536 70	6%	Nov. 1, 1915
Sprague Meter Company----------	2,171 62	6%	Nov. 7, 1915
N. W. Halsey & Company—New York--------	11,961 00	6%	Aug. 16, 1915
N. W. Halsey & Company—San Francisco---	11,961 00	6%	Aug. 16, 1915

On the following conditions and not otherwise, to wit:

1. Southern California Gas Company shall issue said notes so as to net not less than the face value thereof.

2. Southern California Gas Company shall report to the Railroad Commission within ten days after the issue of the respective notes hereby authorized the fact and the date of issue, the face value of the respective notes, the rate of interest and the application of the proceeds, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

3. Southern California Gas Company is hereby authorized during the period one year from the date of this order to issue further notes in renewal of those herein authorized on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from December 31, 1915.

4. This order shall not become effective until Southern California Gas Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 30th day of August, 1915.

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Decision No. 2718.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1852.

Decided August 30, 1915.

Midway Gas Company applies for and is granted permission to renew four promissory notes of a total face value of $10,458.36 for a period of not to exceed one year from December 31, 1915.

A. E. Peat, for Applicant.

Report of the Commission.

This is an application for an order authorizing the issue of promissory notes for the purpose of renewing four (4) notes now due or soon to become due. The notes will be specified in the order herein.

A public hearing was held in San Francisco on August 28, 1915. The evidence shows that the said four outstanding notes or the proceeds thereof were used by applicant for the acquisition of property and for the construction, extension and improvement of its facilities and service.

ORDER.

Midway Gas Company having applied for an order authorizing the issue of promissory notes in renewal of the notes hereinafter set forth, and a public hearing having been held on said application and the Railroad Commission finding that the purposes for which said outstanding notes or the proceeds thereof were used were not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered that Midway Gas Company be, and the same is, hereby authorized to issue its promissory notes for terms not exceeding one year from December 31, 1915, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same payees as at present in renewal of the following notes:

Payee	Amount	Interest rate	Maturity
Hammon Coupler Company	$625 00	6%	Aug. 5, 1915
Hope Engineering Supply Company	625 00	6%	Aug. 5, 1915
J. G. White Engineering Corporation	5,000 00	6%	Sept. 4, 1915
J. G. White Engineering Corporation	4,208 36	6%	Nov. 1, 1915

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On the following conditions and not otherwise, to wit:

1. Midway Gas Company shall issue said notes so as to net not less than the face value thereof.

2. Midway Gas Company shall report to the Railroad Commission within ten days after the issue of the respective notes hereby authorized the fact and the date of issue, the face value of the respective notes, the rate of interest and the application of the proceeds, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

3. Midway Gas Company is hereby authorized, during the period one year from the date of this order, to issue further notes in renewal of those herein authorized on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from December 31, 1915.

4. This order shall not become effective until Midway Gas Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 30th day of August, 1915.

DECISION NO. 2719.

IN THE MATTER OF THE APPLICATION OF MIDLAND COUNTIES PUBLIC SERVICE CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN RATES.

Application No. 1836.

Decided August 30, 1915.

Midland Counties Public Service Commission applies for and is granted permission to renew four promissory notes, of an aggregate face value of $9,219.64, such notes to be issued for a period of not to exceed one year from December 31, 1915.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of promissory notes for the purpose of renewing four notes soon to become due. The notes will be specified in the order herein.

A public hearing was held in Los Angeles on August 23, 1915. The evidence shows that the outstanding four notes or the proceeds thereof were used by applicant for the acquisition of property or for

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the construction, extension, and improvement of its facilities and service, and that all of such expenditures are properly chargeable to capital account.

ORDER.

Midland Counties Public Service Corporation having applied for an order authorizing the issue of promissory notes in renewal of the notes hereinafter set forth, and a public hearing having been held on said application, and it appearing that the purposes for which said notes or the proceeds thereof were used were not in whole or in part reasonably chargeable to operating expenses or income, and that the application should be granted,

It is hereby ordered that Midland Counties Public Service Corporation be, and the same is, hereby authorized to issue its promissory notes for terms not to exceed one year from December 31, 1915, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same payees as at present, in renewal of the following notes:

Payee	Amount	Interest rate	Maturity
The J. G. White Engineering Corporation	$2,653 03	6%	Sept. 3, 1915
Western Electric Company	909 36	6%	Sept. 15, 1915
The J. G. White Engineering Corporation	4,395 15	6%	Oct. 29, 1915
Kelman Electric and Manufacturing Co.	1,261 10	7%	Nov. 28, 1915

On the following conditions and not otherwise, to wit:

1. Midland Counties Public Service Corporation shall issue said notes so as to net not less than the face value thereof.

2. Midland Counties Public Service Corporation shall report to the Railroad Commission within ten days after the issue of the respective notes hereby authorized the fact and the date of issue, the face value of the respective notes, the rate of interest and the application of the proceeds, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

3. Midland Counties Public Service Corporation is hereby authorized during the period one year from the date of this order to issue further notes in renewal of those herein authorized on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from December 31, 1915.

4. This order shall not become effective until Midland Counties Public Service Corporation has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 30th day of August, 1915.

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DECISION NO. 2720.

IN THE MATTER OF THE APPLICATION OF T. H. DIXON FOR AN ORDER AUTHORIZING AN INCREASE IN WAREHOUSE RATES.

Application No. 1733.

Decided August 30, 1915.

Applicant, operating a warehouse at Knight's Landing, under a rate of 50 cents per ton per season, for the storage of grain, which does not include resacking, applies for, and is granted, permission to increase such rate to 75 cents per season, the increase to cover cost of new sacks and resacking.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by T. H. Dixon, a warehouseman of Grafton, for an order authorizing him to increase rates for the storage and incidental handling of grain at Knights Landing, Yolo County. The rate at present charged by applicant is 50 cents per ton per season, which includes the usual warehouse service of receiving, weighing, piling, carrying in storage and delivery of grain upon order of the holder of warehouse receipt; however, this rate does not include the service of resacking nor the furnishing of sacks for that purpose.

The rate requested under this application is 75 cents per ton per season, to be applied to the storage of all kinds of grain at present handled, and in addition to the usual warehouse service given, will, if authorized, embrace all necessary resacking, including sacks and otherwise placing grain in proper condition for shipment.

The property involved has been operated by its present owner since July 1, 1914, prior to which date no satisfactory statements of earnings and expenses were available. Applicant has furnished the following table showing expenditures for the year 1914–15:

Labor	$815 00
Drainage tax	1 35
Insurance	45 00
Taxes	53 19
Reclamation tax	87 58
Repairs and fixtures	125 00
Interest	210 00
Liability insurance	17 50
Total	$1354 62

Earnings for the year named amounted to $1,234.00, indicating an operating loss of $120.62.

The foregoing items of expense represent cash actually paid out as shown, with the exception of the $815.00 allowed for labor. Of this

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sum applicant has assumed that $60.00 per month for a period of three months would be a fair allowance for his own services as laborer and superintendent. The allowance does not appear to be too high. The balance of $635.00 paid for the employment of four regular men at $2.50 per day for a period of approximately three months, and three additional men during rush periods. The reasonableness of this item can not be questioned. Some of the repairs and fixtures covered by the $125.00 item are of a more or less permanent nature, the cost of which should be distributed over a number of years. One-fourth of this amount would probably be sufficient for annual repairs. The interest item of $210.00 represents a mortgage indebtedness of $3,000.00 not yet liquidated.

Applicant paid $5,000.00 for the warehouse property, allowing $3,500.00 for the structures and $1,500.00 for the two lots on which the warehouse stands. The warehouse was built in 1902. It is a wood structure throughout, measuring 60 x 110 feet, with a wing 50 x 64 feet, and has a grain capacity of about 2,500 tons. As located, its useful life would probably not be over forty years. Equipment and facilities are of the kind usually found at an interior warehouse, consisting of hoists, hooks, ladders, trucks and scales—one portable and one stationary type.

Notwithstanding the fact that this warehouse was built so as to make through driveways impracticable, necessitating expensive handling by truck from outside doors, it nevertheless parallels the Sacramento River and enables warehousemen to make direct transfer of grain when loading out to craft moored at the landing. At the present time all grain is shipped out via vessels, although rail facilities are accessible and could be used in an emergency.

Applicant's rates are at present 25 cents per ton lower than charges assessed by the majority of warehousemen operating in Sacramento Valley. This is made possible by reason of the fact that out-loading from warehouses located on navigable rivers and sloughs is usually done by the boat's crew. Rates authorized under this application will contemplate a continuation of this practice. If applicant should for any reason be compelled by circumstances to ship grain by rail, necessitating a drayage charge, an amount not to exceed 25 cents per ton will be charged for loading cars, as has been indicated in applicant's tariff heretofore filed with the Commission.

In justification of the proposed increase in rates, applicant claims that under his present charges not only is there a failure to realize interest on his investment of $5,000.00, but that an actual deficit has resulted for the only year which the present owner has conducted the warehouse; that owing to the inferior quality of labor at present obtainable and also to the enforcement of shorter hours, the cost of

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service is considerably higher than when the rate now in effect was established; and that the nature of the crops now offered for storage differs materially from that of a few years ago. Whereas wheat was formerly the chief grain produced, over 90 per cent of the grain at the present time in applicant's warehouse is barley. The testimony showed that while a given weight of barley would occupy more space than an equal weight of wheat, the handling cost would not perceptibly diminish. There was nothing in the evidence produced tending to controvert applicant's contention in these matters.

Another strong feature of this investigation pointing to the fairness of the rate requested by applicant was the fact that at the hearing not a single patron, or other interested party, was present to protest against the establishment of the rate sought, notwithstanding the fact that personal notice had been given to each of applicant's present and former patrons.

While the rate of 75 cents per ton per season will, if allowed, be apparently a direct increase of 25 cents per ton on all stored grain, it will, as a matter of fact, be much less than that, for the reason that under such rate applicant will assume all responsibility and expense for necessary resacking, including sacks, or otherwise placing grain in proper and safe condition for shipment. It was claimed by applicant that resacking and overhauling charges have, in the past, amounted to about 20 cents per ton, from which it would appear that the increase asked for would actually amount to but 5 cents per ton per season.

For the foregoing specific reasons, and because of the general conditions surrounding this service, I find as a fact that 50 cents per ton per season for grain stored in applicant's warehouse at Knights Landing is an unreasonably low rate; and I further find as a fact that 75 cents per ton per season is a just and reasonable rate for such service.

I recommend the following form of order:

ORDER.

T. H. Dixon, a warehouseman at Grafton, Cal., having applied to the Railroad Commission for an order authorizing an increase in rates for the storage of grain in his warehouse at Knights Landing and a hearing having been held upon said application and the Commission being fully advised in the premises,

It is hereby ordered that the application be granted and that applicant be permitted to charge and collect for the storage of grain the rate herein found to be just and reasonable for the service, viz: 75 cents per ton per season.

It is further ordered that the collection of this rate shall be conditioned upon the rendering of first class service, as heretofore given,

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such as receiving, weighing, piling, carrying in storage, and such other service as is customary for warehousemen similarly situated to give, and, in addition thereto, all necessary resacking, including the furnishing of sacks, or otherwise placing grain in proper condition for shipment.

It is further ordered that the rate herein found to be just and reasonable shall become effective immediately upon filing with the Railroad Commission a schedule, in duplicate, showing the same and the conditions upon which it may be collected.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of August, 1915.

DECISION No. 2721.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR AUTHORITY TO PLEDGE AS COLLATERAL SECURITY ITS GENERAL LIEN BONDS.

Application No. 1152.

Decided August 30, 1915.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL ORDER.

This Commission on August 4, 1915, in its Decision No. 2662, having authorized San Francisco–Oakland Terminal Railways to pledge $18,000.00 face value of its general lien mortgage 5 per cent five year gold bonds with Commonwealth Bonding and Casualty Insurance Company, in order to secure an undertaking and stay bond on appeal in the case of *Forrester* vs. *San Francisco–Oakland Terminal Railways;*

And applicant now having reported to this Commission that it has been unable to come to a final agreement with said Commonwealth Bonding and Casualty Insurance Company with reference to the issuance of said undertaking and stay bond on appeal, but that it has been able to arrange with Casualty Company of America for the issuance of such a bond, provided it delivers to said company as collateral security a certified check in the amount of $10,500.00;

And applicant now having represented to this Commission that it will be necessary to borrow said sum of money from Central National Bank of Oakland upon its promissory note, and having therefore

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requested a modification of the above mentioned order of August 4, 1915, which will permit it to pledge said $18,000.00 face value of its general lien mortgage gold bonds with Central National Bank of Oakland as collateral security for its promissory note in the sum of $10,500.00, payable one day after date and bearing interest at 6 per cent per annum; and it appearing to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that this Commission's Decision No. 2662 be, and it is hereby, amended to the end that San Francisco–Oakland Terminal Railways be, and it is hereby, authorized to pledge $18,000.00 face value of its general lien mortgage 5 per cent five year gold bonds with Central National Bank of Oakland as collateral security for its promissory note in the sum of $10,500.00, payable one day after date, bearing interest at 6 per cent per annum; the proceeds of said note to be used in securing a certified check to be deposited with Casualty Company of America as collateral security for stay bond on appeal in the case of *Forrester* vs. *San Francisco–Oakland Terminal Railways.*

It is further ordered that all of the provisions contained in this Commission's Decision No. 2662 not in conflict with the order herein shall remain in full force and effect.

Dated at San Francisco, California, this 30th day of August, 1915.

DECISION NO. 2722.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1837.

Decided August 30, 1915.

Applicant applies for and is granted permission to renew eleven promissory notes of the aggregate face value of $91,481.12, such notes to be issued for periods of not to exceed one year from December 31, 1915, with interest at not to exceed that now borne by notes to be renewed.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of promissory notes for the purpose of renewing eleven notes now due or soon to become due. The notes will be specified in the order herein.

A public hearing was held in Los Angeles on August 23, 1915. The evidence shows that all of the notes specified in the order herein or the

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proceeds thereof, with the exception of the note to the Standard Oil Company for $15,000.00, were used by applicant for the acquisition of property or for the construction, extension and improvement of its facilities and service, and that while the indebtedness to the Standard Oil Company was incurred for operating expenses, a sum of at least an equal amount was expended by applicant for capital purposes for which it is now entitled to reimbursement.

ORDER.

San Joaquin Light and Power Corporation having applied for an order authorizing the issue of promissory notes in renewal of the notes hereinafter set forth, and a public hearing having been held on said application, and it appearing that the purposes for which said notes or the proceeds thereof were used were not in whole or in part reasonably chargeable to operating expenses or to income, excepting in the case of the note given to the Standard Oil Company for $15,000.00, which indebtedness, though incurred for operating expenses, represents a sum which was expended by applicant for capital purposes for which it is now entitled to reimbursement, and that the application should be granted,

It is hereby ordered that San Joaquin Light and Power Corporation be and the same is hereby authorized to issue its promissory notes for terms not to exceed one year from December 31, 1915, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same payees as at present in renewal of the following notes:

Payee	Amount	Interest rate	Maturity
National Conduit and Cable Company	$30,000 00	7%	July 20, 1915
John A. Roebling's Sons Company	10,000 00	7%	July 24, 1915
Westinghouse Electric and Manufacturing Company	4,868 63	6%	Sept. 19, 1915
The J. G. White Engineering Corporation	5,000 00	6%	Sept. 27, 1915
John A. Roebling's Sons Company	2,500 00	7%	Oct. 13, 1915
Standard Oil Company	15,000 00	6%	Oct. 24, 1915
Union National Bank, Fresno	2,500 00	6%	Oct. 27, 1915
Allis-Chalmers Manufacturing Company	5,112 49	6%	Oct. 30, 1915
Fresno National Bank	10,000 00	6%	Nov. 7, 1915
Kelman Electric and Manufacturing Co.	1,500 00	7%	Nov. 24, 1915
Commercial Bank of Sanger	5,000 00	6%	Nov. 25, 1915

Upon the following conditions and not otherwise, to wit:

1. San Joaquin Light and Power Corporation shall issue said notes so as to net not less than the face value thereof.

2. San Joaquin Light and Power Corporation shall report to the Railroad Commission within ten days after the issue of the respective

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notes hereby authorized the fact and the date of issue, the face value of the respective notes, the rate of interest and the application of the proceeds, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

3. San Joaquin Light and Power Corporation is hereby authorized, during the period one year from the date of this order, to issue further notes in renewal of those herein authorized on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from December 31, 1915.

4. This order shall not become effective until San Joaquin Light and Power Corporation has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 30th day of August, 1915.

Decisions Nos. 2723, 2724, 2725, grade crossings; not printed. See end of volume.

DECISION NO. 2726.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED AND SIXTY-SIX THOUSAND DOLLARS AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided August 31, 1915.

REPORT OF THE COMMISSION.

FOURTH SUPPLEMENTAL ORDER.

It is hereby ordered that section five of this Commission's order, dated June 30, 1915 (Decision No. 2550), be amended so as to read:

"The proceeds obtained from the sale of $74,000.00 face value of bonds herein authorized shall be deposited by Western States Gas and Electric Company in a special account to be expended as the work for the extensions, additions and betterments progresses. The proceeds obtained from the sale of $10,000.00 face value of bonds herein authorized shall be delivered to the company to reimburse it for the extensions, additions, and betterments made by it during the month of May, 1915, in accordance with its report accompanying said supplemental application; the remaining $182,000.00 face value of said bonds may be delivered to the company at once upon its depositing with the trustee in cash the face

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value of all bonds so delivered, which said deposit may be withdrawn by the company from time to time as reports showing the making of extensions, additions and betterments to its property are filed with, and approved by this Commission."

It is further ordered that this fourth supplemental order shall supersede and be in lieu of the second supplemental order heretofore issued in this matter on August 18, 1915 (Decision No. 2697), and in lieu of the third supplemental order heretofore issued in this matter on August 24, 1915 (Decision No. 2706).

It is further ordered that said second supplemental order in this matter, dated August 18, 1915 (Decision No. 2697), and the said third supplemental order in this matter dated August 24, 1915 (Decision No. 2706), be and the same are hereby ordered canceled and annulled.

Dated at San Francisco, California, this 31st day of August, 1915.

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SUMMARY OF GRADE CROSSING DECISIONS.

Decision No.	Application No.	Applicant	Location	Action	Date
2439	1689	Pacific Electric Ry. Co.	Acton	Granted	June 2, 1915
2449	1608	Pacific Electric Ry. Co.	Riverside	Granted	June 7, 1915
2450	1609	Pacific Electric Ry. Co.	Riverside	Granted	June 7, 1915
2451	1610	Pacific Electric Ry. Co.	Riverside	Granted	June 7, 1915
2452	1710	Pacific Electric Ry. Co.	Pasadena	Granted	June 7, 1915
2453	1711	Southern Pacific Co.	Lodi	Granted	June 7, 1915
2454	1712	Santa Fe Ry. Co.	Claremont	Granted	June 7, 1915
2472	1718	Southern Pacific Co.	Waits	Granted	June 14, 1915
2479	1696	Pacific Electric Ry. Co.	Tropico	Granted	June 14, 1915
2496	1685	Inyo County	Inyo County	Granted	June 17, 1915
2499	1698	Los Angeles County	Los Angeles Co.	Granted	June 19, 1915
2507	1719	Santa Fe Ry. Co.	Los Angeles	Granted	June 21, 1915
2532	1737	Stockton Terminal and Eastern R. R.	San Joaquin Co.	Granted	June 28, 1915
2533	2743	Southern Pacific Co.	Calexico	Granted	June 28, 1915
2534	1745	Huntington Beach	Huntington B'ch	Granted	June 28, 1915
2554	1750	Yolo County	Yolo County	Granted	July 2, 1915
2555	1746	Pacific Electric Ry. Co.	Claremont	Granted	July 2, 1915
2582	1757	Santa Fe Railway Co.	Del Rey	Granted	July 9, 1915
2587	1668	Merced County	Amsterdam	Granted	July 13, 1915
2588	1758	Pacific Electric Ry. Co.	Los Angeles	Granted	July 13, 1915
2589	1763	Southern Pacific Co.	Lindsay	Granted	July 13, 1915
2595	1373	Kern County	Kern County	Dismissed	July 13, 1915
2613	1699	Los Angeles County	Willowbrook	Granted	July 20, 1915
2615	1748	Anaheim	Anaheim	Granted	July 22, 1915
2616	1774	Southern Pacific Co.	Calipatria	Granted	July 22, 1915
2617	1788	Southern Pacific Co.	Clotho	Granted	July 22, 1915
2618	1793	Southern Pacific Co.	San Francisco	Granted	July 22, 1915
2619	1794	Southern Pacific Co.	San Francisco	Granted	July 22, 1915
2645	1796	Santa Fe Ry. Co.	Richmond	Granted	July 30, 1915
2675	1817	Southern Pacific Co.	Los Angeles	Granted	Aug. 7, 1915
2676	1818	Southern Pacific Co.	Armona	Granted	Aug. 7, 1915
2688	1827	Southern Pacific Co.	Atwater	Granted	Aug. 12, 1915
2699	1768	Fresno County	Firebaugh	Granted	Aug. 19, 1915
2700	1769	Fresno County	Mendota	Granted	Aug. 19, 1915
2705	1839	Southern Pacific Co.	Rockwood	Granted	Aug. 20, 1915
2707	1777	San Francisco-Oakland Terminal Rys.	Oakland	Granted	Aug. 24, 1915
2708	1613	Fresno County	Fresno County	Granted	Aug. 24, 1915
2712	1851	Pacific Electric Ry. Co.	Corona	Granted	Aug. 24, 1915
2723	1846	San Joaquin County	Kenefick	Granted	Aug. 30, 1915
2724	1857	So. San Francisco Belt Ry.	S. San Francisco	Granted	Aug. 30, 1915
2725	1816	Pacific Electric Ry. Co.	San Bernardino	Granted	Aug. 30, 1915

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